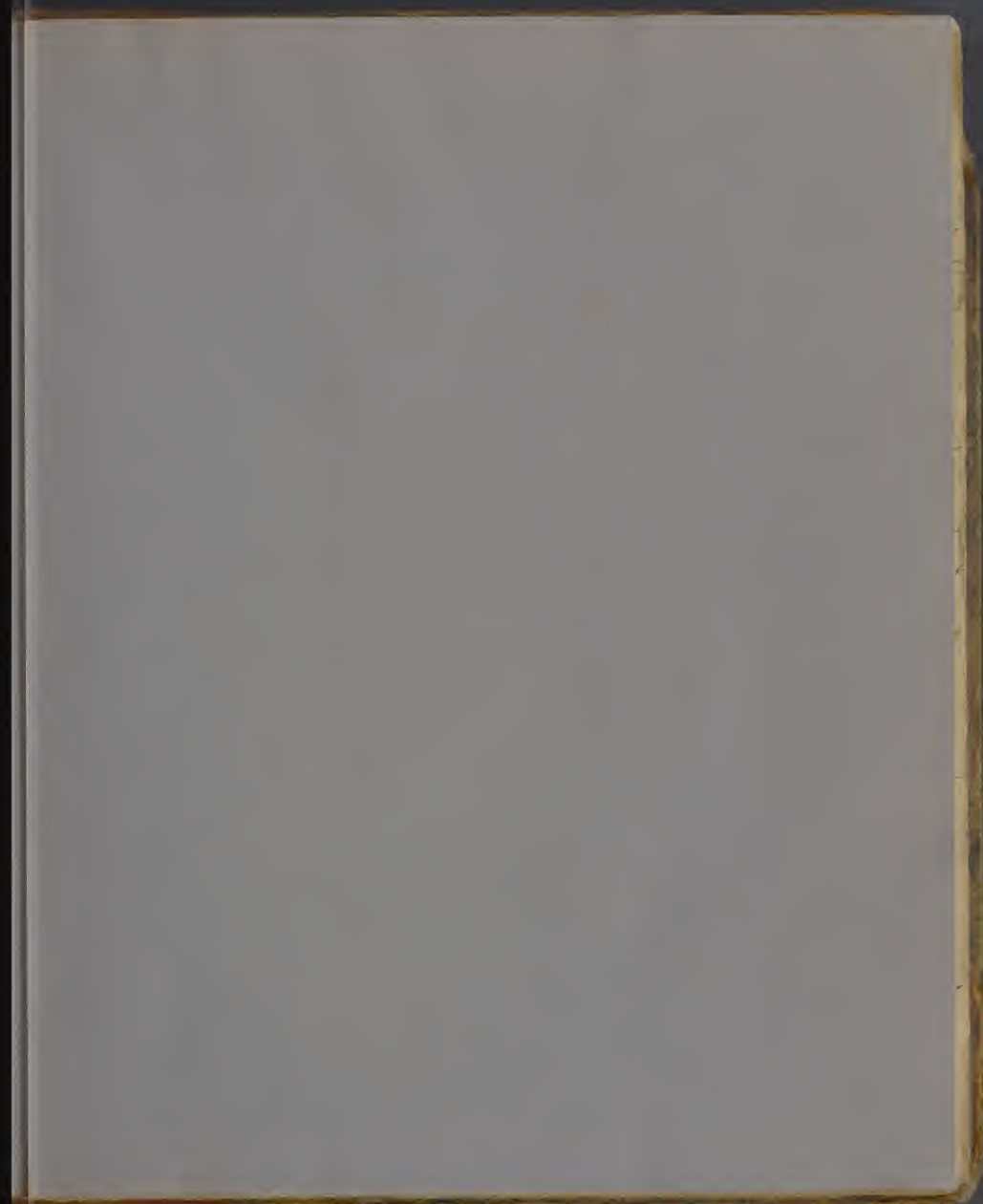
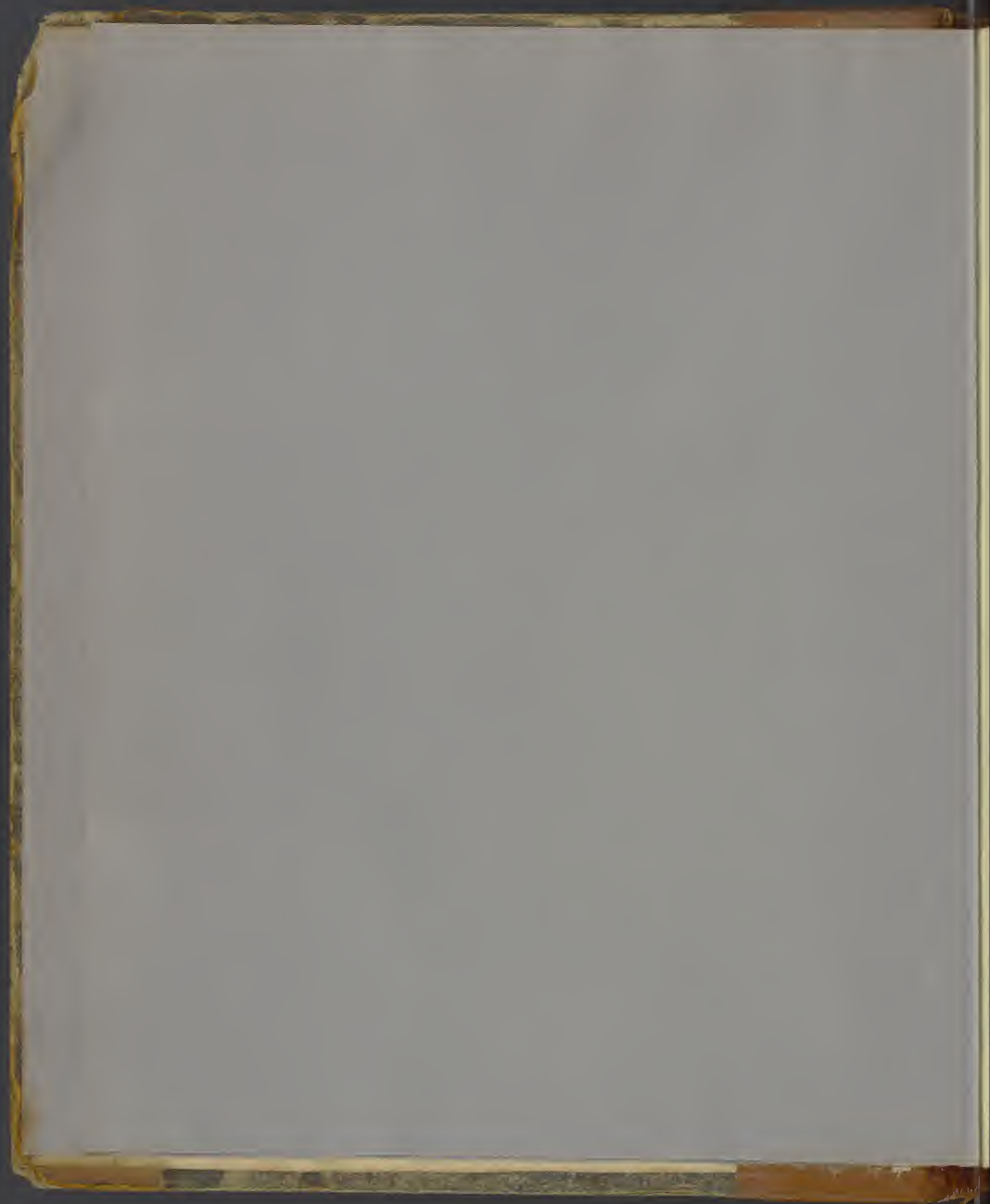


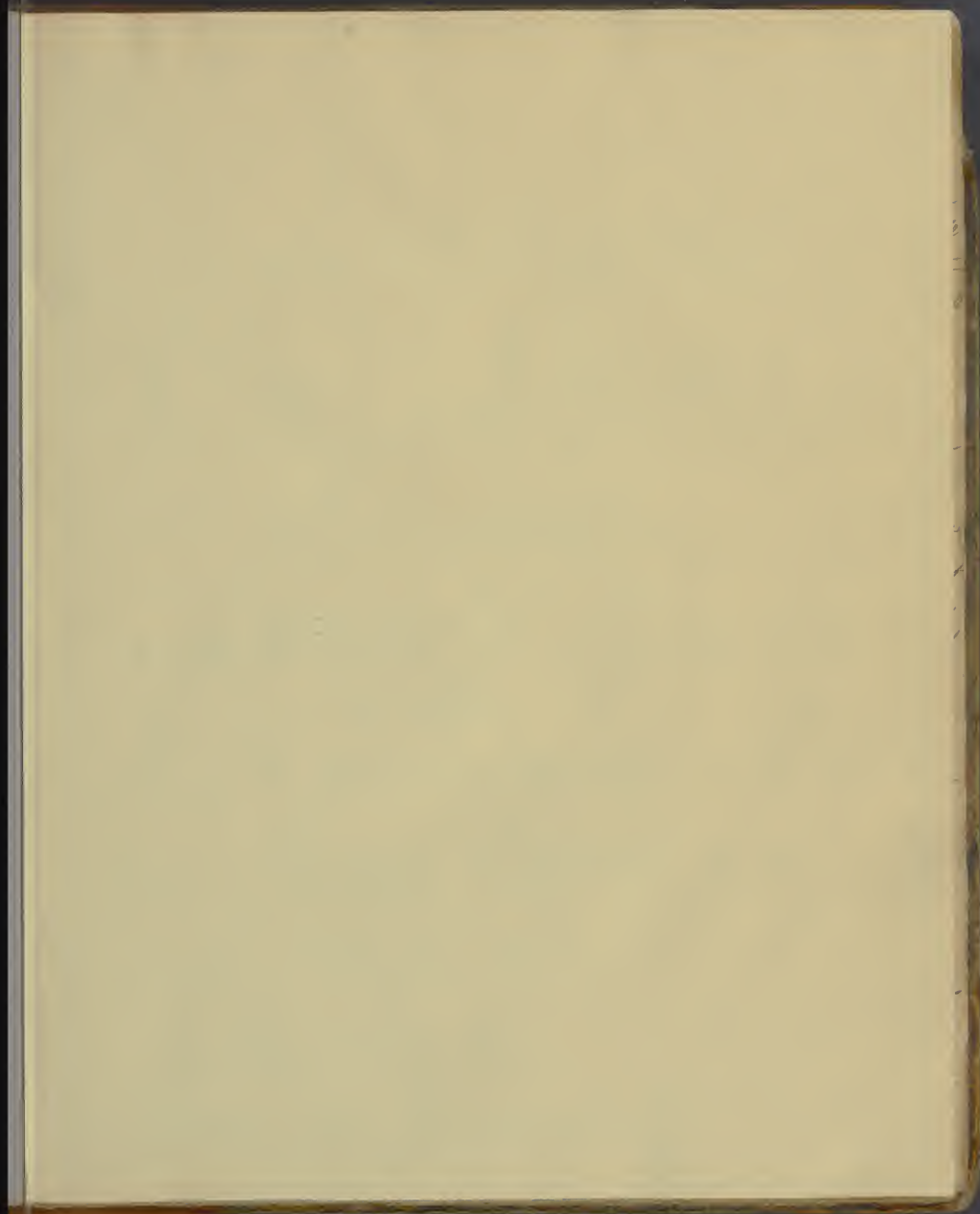
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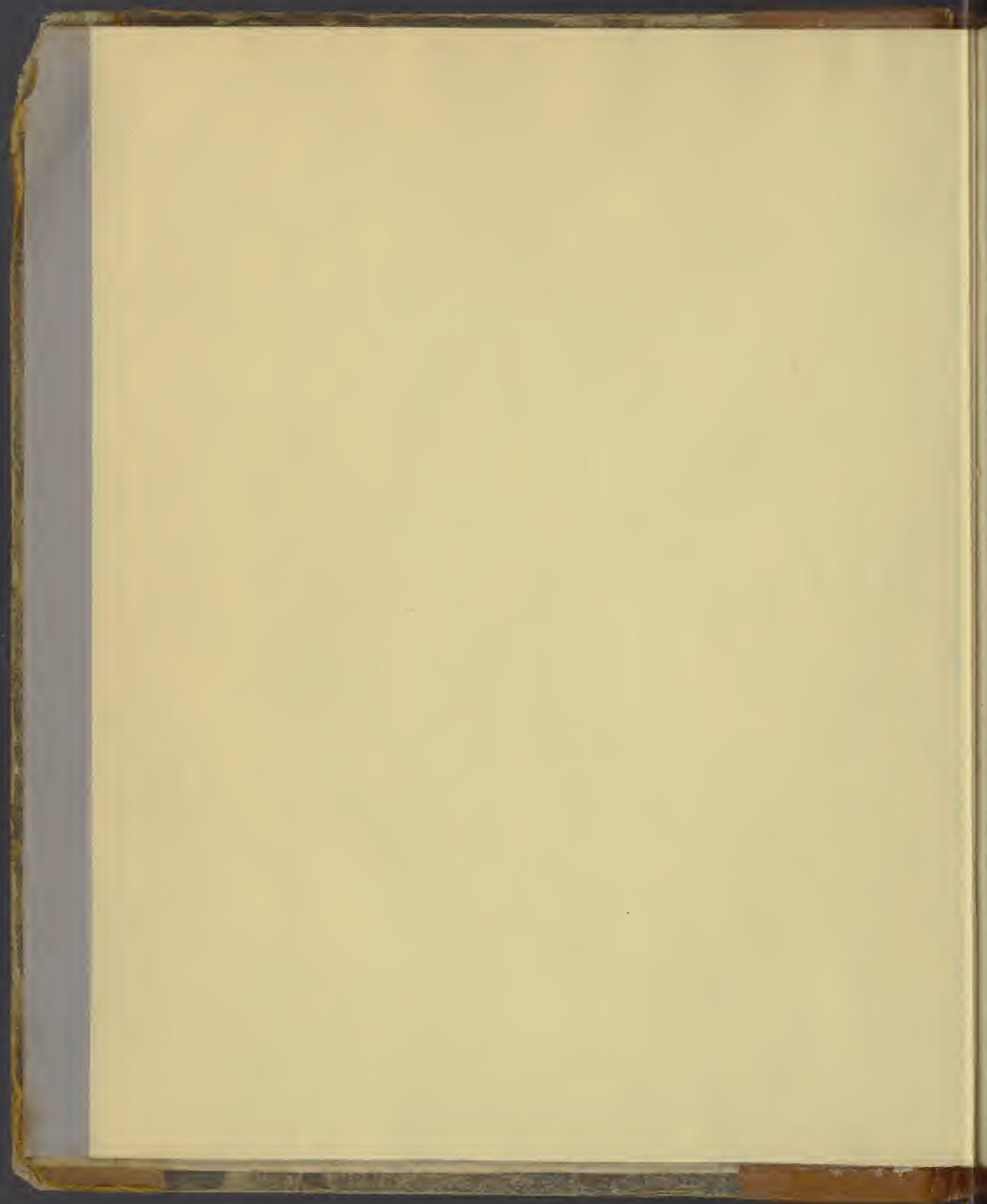


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Lectures
On Law

Delivered in
Litchfield (Connecticut)

By
The Hon. Tapping Reeve
And James Gould Esq^r

In 1809 & 1810

Transcribed by
Josias H. Coggeshall

1847

1848

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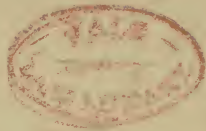
1852

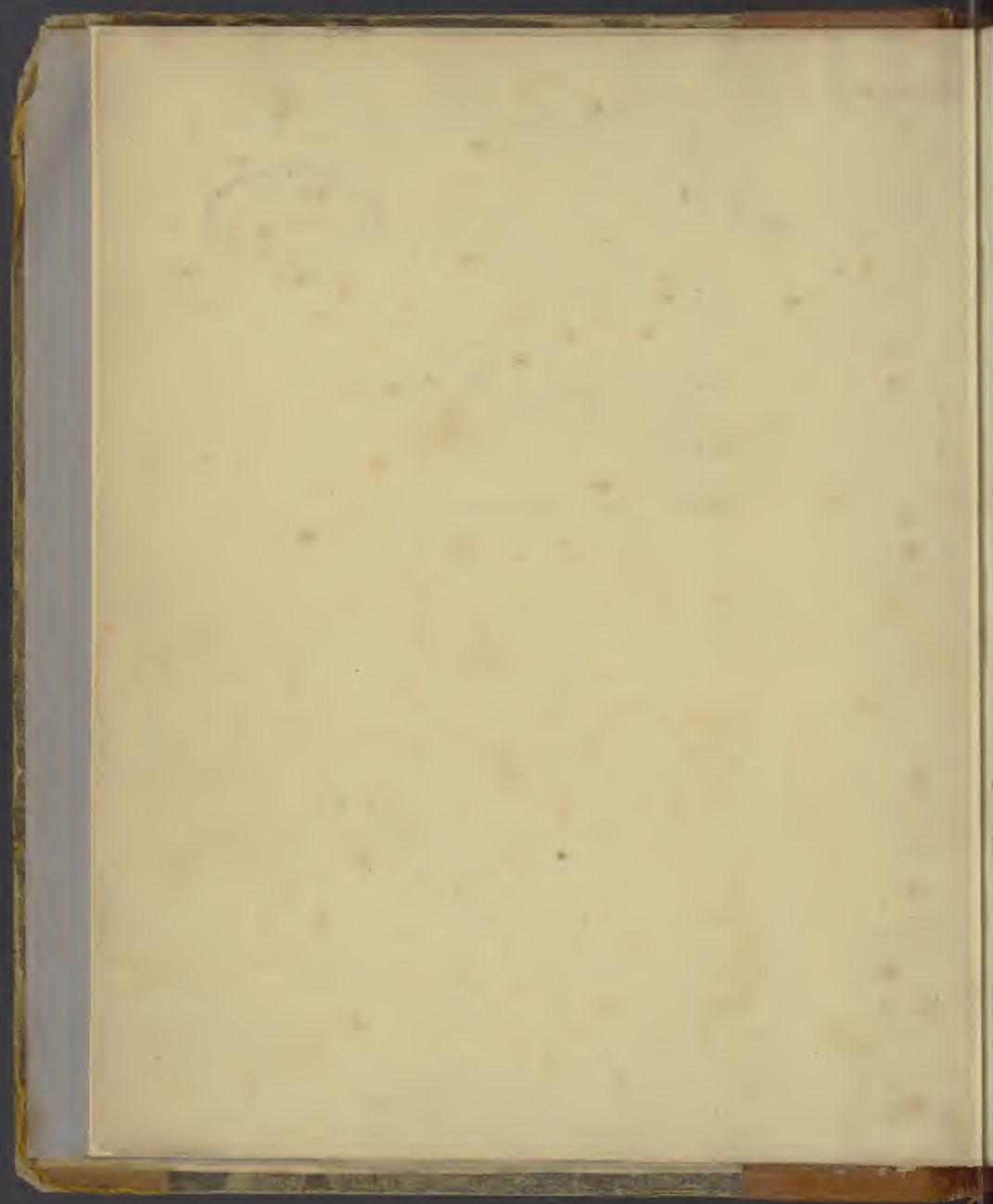
1853

1854

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Executors & Administrators

Lecture 1st This subject will include in it all estates of deceased persons of a personal nature (for it is the duty of the administrator to see to this) & also, if there be a will, to the disposition of all legacies. We shall first take a general view of the subject.

To get at the idea of an Executor or administrator we must suppose a person dead & one to take his estate.

When a person is dead if he has left a will, that will is the Law, relative to the disposition of his estate, & where there is no will, the Law points out who shall be the taker of the estate.

The Law has pointed out a different course for the disposition of real & personal estate - we will hint out the manner in which each is disposed of at Common Law. There is however almost a complete revolution of the Common Law principle in the United States.

The real estate goes directly to the Heirs, if there is no will, or, effectively as if conveyed by Deed. If there be a will, it goes to the devisee, be he who he may. Personal property never goes to the Heir as such. He indeed takes it as his executor or administrator. But Executors & administrators hold the personal property as trustees, in the first place to pay the Debts; in the second place, when the Law lays out the Debts & there is a will, he is a trustee for the Legatee upon the principles of the Common Law.

See Hall's York note
on the duty of Heirs & devisees

R. L. 235

R. L. 311.

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agreeable to the maxim that a man must be just before he is liberal: so that all legacies must be an after consideration & if any remain they will be paid.

The real property we have said goes immediately to the heir, so that he cannot be got at thro' the executor to pay the debts. This is a great defect of the Common Law.

The heir or devisee is however liable to 'express' & 'special' creditors for the debts when they passed to the heir, passed with this heir upon them.

Specialty creditors can likewise go upon the lands in the hands of the heir.

The heir or devisee however was not personally liable. Hence if he aliened immediately some should purchase bona fide, the specialty creditor would, as the Common Law then stood, lose his debt. But a Statute has remedied this, & provided that the heir or devisee shall be personally liable in such case. The extent therefore of their liability is to answer judgement of specialty debts. (But the specialty creditor may if he choose go against the executor, & many times he will, for if he goes against the heir or devisee, he gets nothing but he may not want. But where there are no asset, simple contract creditors must lose their debt. —

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Executors are liable to the extent of their assets. In the
rigour of the common Law ^{but} mitigated by the Statute
has been mentioned all else has been done by Chancery.

Chancery will allow the simple contract creditors to
go against the heir, for so much as the specialty creditors
might have or has gone against the Executor, for, & no more.
The remaining simple contract debts are lost, when there
are no assets remaining.

Personal property then is a fund liable to all
the Debts. Real property is a second fund liable to the
judgment & specialty debts, & by Statute the person of the
deceased or devisee is also liable with the Lands, viz -
Chancery goes still farther & makes the specialty cred-
itors go against the heir, or a Latin is the same thing viz -
the simple contract creditors when the specialty mas-
sages gone against the Executor, then in the specialty cred-
itors' case - common Law is very defective & even with
the aid of the Statute & of Chancery seems not to do
complete justice - In the latter generally the defect
has been nearly, tho' not entirely remedied. In Chancery
the personal property is first liable, & must be exhausted
& then resort is had to the real property which is liable
as far as it extends. The Executor procures an order from
the Court of Chancery to sell the Lands. The real estate
however does not vest in the Executor but in the Lands.

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of the Law in Devise as at Common Law; liable to be directed on failure of assets to pay the Debts.

What our Statute have directed to be done in case of failure of assets to pay the Debts is frequently by the Testator in England, for he may by will make all his real-estate liable for his Debts. He may empower his executor to sell his real estate, which is of the same validity as the in his life time he has given him a power of Attorney to sell it. But in England we see it is in the option of the Debtor to pay his honest creditors or not - here we can be told to do it.

But a law in England a man devise his Estate to pay his debts in these words "I do hereby declare that Blackacre shall be sold to pay my debts & must be sold to pay them until all the personal estate has been exhausted even the all the personal property was exhausted in equities.

This Construction however does not prevail in the U. States. Here generally the person, who are his estate's real subjects are heirs to the personal also. The whole goes to the same persons; hence there is no need of this construction & the will of the testator as expressed will be observed. The ground of the English Construction was, the anxiety the Law always manifested

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to preserve the law in its right. So have been all the decisions & my late decisions. But we have no view of their construction.

Priority of Debts.

There is a priority to be observed in paying debts by the Executor, where the assets which in London legal assets; but where there are none but equitable assets there is no priority, but all are to be paid.

Legal assets are such as arise from the sale of property, which the executor receives in capacity of Executor, & which he can without any assistance convert into money. Equitable assets are those which the executor was obliged to procure the aid of Chancery to get possession of, or where he might have been obliged to try such aid as those which arise from the sale of Lands &c. In such cases Chancery knows nothing of priority, but directs all debts to be paid from the fund alike. Where one in his will directs his executor to sell his Lands, the executor cannot of course do it - perhaps he will not do it or perhaps they are devised to another so sell in order to pay debts & he will do nothing about it in either of these cases Chancery has to interfere in order to effect the sale; of course the assets will then be equitable -

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Executor may be liable to the extent of the assets. Nothing is assets but what is turned into money in the hands of the executor or administrator. If the Ex^r will not sell the personal property of the deceased or waste, or sells it under its value, he will then be liable for a deceit tho' not as Executor, & judgment goes at law In cases where he is sued as Executor or Creditor, judgment goes at the property of the intestate in his hands If then he refuses to pay or turn out the property at so far brought, judgment will be against him in assumpsit. Judgment will go at law to the extent of what he has actually wasted. This will be paid to the creditors according to priority. In Connecticut an Ex^r cannot plead plene administravit but in one instance.

In case where specific as well as pecuniary legacies are given the legal title to them or the property vests in the Ex^r & the legatee cannot take them until the Ex^r has given his account. But if he has paid all the debts so that he does not want them for assets, & he refuses to deliver them the legatee altho' they cannot recover the specific things may recover damages in a Court

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Lecture 2 - The executor is the wife for his goods.
This is his Law.

Then there is a surplus of property after payment of debts & legacies this frequently goes to a residuary legatee in But if after all the legacies paid, there still remains a residuum undisposed of by the will - where does it go? & if all the testator's Law is devoted but one to him the will be disposed of according to Law - But where the intent to devise all the property is paid a residuum remains - The notion which prevailed in the spiritual courts was, that the Ex^r should take it for his services, as in England an Ex^r has no reward for his services - In connection there are said by a statute provision for alien - in some of the States & Gentian -

Upon this general principle Phaulcon has made a very great inroad. They there go upon the ground that the Ex^r should have it if the testator made no provision for him - Why the will, it is clear that the testator did not design to give the Ex^r anything for his trouble, as an actual provision in the will the Ex^r shall have the residuum both at Law & in Equity. But it is provided for him by a Law

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or specific issues, then he shall have the residue for the benefit of the relations of the deceased according to Law.

If however it is clear that the legacy was not designed to recompense the ex^r for his trouble, as when it was given to buy a mourning ring or a suit of clothes - he will still have the surplus -

The legal construction of the will is different from the equitable construction. As I saw the residue go to the ex^r - in Chancery if the ex^r has provided for he distributes to the kindred if not he takes it as a recompense. This is called the equitable construction, but there is the difference - hard proof may be admitted to show that the deceased intended to provide for the ex^r, trouble or not.

But hard proof cannot be admitted to contradict or oppose the legal operation of an instrument, it may be introduced to rebut an equity arising out of an equity where the equitable & legal construction differ to restore the old legal construction. One maxim on this subject which is to govern in all cases is that, "the intention of the testator is always to be the rule, of consistent with the rules of Law". The principal difficulty is to understand the intention: & next is it consistent with the rules of Law.

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The rule does not apply at all to the words used, but to the estate given. If the testator uses words which cannot apply at all to the estate it will then be distributed by Law - as when one entails personal property - then the intention of the testator will be defeated - the Law interferes & vests it absolutely in the first. If one gives an estate in fee simple & then directs that the donee shall not convey it away during his life this provision is void; for no such ^{estate} exists at Law. If then one adds a qualification or restriction to an estate contrary to Law, it is nugatory. But if he gives such an estate as he can give, in whatever words it is conveyed, if it is consistent with the rules of Law & the intention is clearly known, the donation is good & the will shall govern -

With respect to parole proof to explain the intention of the testator, it is a general rule, that parole proof is not to be admitted to explain wills -

A distinction is taken between a patent & a latent ambiguity. If then the ambiguity on the face of the instrument, parole proof, cannot be admitted to explain it. But if there is a fact

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denies the will, about which there is doubt, legal proof may be introduced to explain it. as where testator devises to son John & has two of that name legal proof may be admitted to show which was meant. This is a latent ambiguity in which case legal proof may always be introduced - yet even here the construction cannot be made to contradict the words of a will - Where a legacy was given to an old maid to "the 4 children of my Cousin E.B." & by her 5 children; 2 by a rich husband & 4 afterwards by a poor one - she was a necessity for proof & it was determined that she meant the four last - But she farther gave more property to "my Cousin E.B.'s children" here if we say she shall have it, the construction does not stand well with the words of the will - of course it must go to the six children for all are her children -

What then is the extent of the rule? merely to facts & dehors - I can never be admitted to explain the sentences of a will where they are obscure - If the will is so plain that no one can understand it is called coca intentio & is nulla bonis -

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But where H will is written without any punctuation the meaning may be obtained by a view of the whole. There is a principle of policy as to sentences - still parol proof may be admitted to show the circumstances of a man's estate or family at the time of making the will. as where one makes a will & gives his real estate to J & S & his children. J & S & his children take the estate as joint-tenants but if he has no children he takes an estate tail. Here parol proof may be admitted to show whether he has children or not. In this case children denote the kind of estate given & is an equivalent to the words or heirs of his body. In the case of his having children they are *descriptio personarum*. (Read all such ambiguities of words may be explained by parol proof -)

The situation of the property may likewise be shown by parol to explain the meaning of the testator. as where one had an estate tail in a house in London called the Bell Tavern & the reversion in his will devised it to the owner in tail. By the devise the devisee takes but a life estate when the thing given is specific. But as he had already a greater estate it was construed to be a passing of the reversion.

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& the fact of his already having an estate tail was proved by parol. We have said that altho' parol proof cannot be admitted to explain sentences, yet it may be admitted to explain ambiguous words, as by the English Law formerly when an estate was given "seniori puero" it was uncertain whether it meant the oldest child or oldest boy as puer means either occasionally. Here parol proof is admissible to explain the ambiguity - "Estate" was once, tho' not now, an equivocal word, as it was used sometimes to denote the interest & sometimes the thing itself. It now means not only the thing by name, but the interest in it.

There may be a misdescription & yet the whole instrument taken together will shew the meaning - as when Testator gave a legacy to A; I in the service of the Duke of Devon, L's son's name was B, but in proof of this fact the description was held sufficient - When a man gave a stick name to L's niece I in his will called her by it or parol proof to prove the fact she took the legacy - tho' had he actually died one living by that name, she would have taken

These things all stand well with the will - No real property passes by the will but what the Testator had at the time of making the will; but all the personal property which a man dies possessed of may pass by a will made 10 years before his death.

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Lecture 3^d An Ex^r may have a Beneficial interest in the estate after the trusts in the will are performed, for the residuum cannot be called out of his hands by process of Law. The power of creating a vesting over trust is a qualified one. He cannot take unless there is a residuum after creditors are satisfied for they cannot be satisfied by their debtors donations, &c. no matter what the form of giving be, whether by Deed or. Bond &c. If the estate gets into the hands of a volunteer by accident, he cannot hold it against creditors, but it will be called out of his hands by application to a Court.

A volunteer is one who takes property by the disposition of the will or by Law.

The liability of an Ex^r or Adm^r extends no farther than assets, strictly as ex^r or adm^r. Assets is not strictly the value of the estate but what it brings; not the amount of the inventory, but the avails in money of the sale of the property contained in the inventory - of course the assets may be more than the amount of the inventory or may be less. The sum contained in the inventory is *prima facie* the sum of the assets; but if they should exceed the inventory the Executor is liable to account for the surplus.

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15.

If fraud has been practiced in the sale of the property, the Ex^r or adm^r is not liable for this as, Ex^r but only to the extent of the actual assets.

But he is liable for a Covenant as any other person would be, & is liable in bonis propriis on account of the tort. In the other case, judgement in the first place in favour of the creditor goes against the estate in his hands.

Duties of an Executor or Administrator

His first duty is to pay the Debt after he has reduced the estate into money - but he is before the creditor.

First we will consider a case where the estate is sufficient to pay the debt, or that there are actually paid & still there is a residuum for the legacies after all there are paid, there yet is property remaining in the hands of the Ex^r or adm^r. I shall pass of course all his duties which precede that which is incident to the duties of distributions -

Distributions -

After payment of Debts & legacies the Ex^r is bound to make distribution of the personal property. The mode of distribution is settled by Statute 22^d Geo. 2^d which says that after payment of Debts, legacies & the widows share, the surplus shall go to the children & their representatives.

Lovell. 66.

73.

If there be no children then to the next of kin & their legal representatives. If representative is admitted among collaterals beyond brothers & sisters & their issue -

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The English Law of Distribution of Personal property has been adopted almost verbatim in nearly or quite all the States & will at once teach us the Law by reading the Statutes. The principles which govern in case of personal goods also in the distribution of real property. The Stat. of Con. provides, that a man's estate at his death without will, when his debts are paid shall be distributed to the children & their legal representatives to the exclusion of every one else - & in default of these to the next of kin & their legal representatives.

The only difficulty is in ascertaining who are next of kin in the true sense. The property is to go in equal shares to all who are in equal degree a general rule.

The computation of the degrees of kindred or relationship under the Statutes is always by the Civil Law.

Here we adopt this method because we have adopted the construction of the Statute of 22 Geo. 2 under this method was also adopted - besides we have adopted their words & of course are to use them in the cases in which our ancestors understood them. The reason why the civil Law method of computation came to be adopted, was those who transacted the business were ecclesiastics & of course attached to the civil Law.

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However in our statutes we adopt the language of an English statute we are to understand their construction if it appearing here, under there is a difference expressed.

The linear descending line is so well known that it would be needless to go into particulars respecting it. In other collateral line the degree of kinship is thus ascertained—Count up to the common ancestor of the persons claiming & down to the petitioner. The number is the degree of kinship.

2. Desc.
429- The distributive shares vest in the kindred of the intestate at his death & of course are transmissible to the claimants, viz before distribution—

A distributive share vests in an Infant in utero so more under the statute of distribution. Distribution is made within one year after the death of the intestate.

The personal estate first goes to the next of kin, in the descending line & then real & personal estate, viz to children & then issue in infinitum.

So long as any of the old stock remain in any of the linear degrees the estate goes per stirpes, per representation—

But after the old stock is extinct the estate is distributed per capita & not per stirpes.

Some contend that the distribution in this case

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London 71
Dec 1845.
2 Dec 49 -
1 Dec 282 -

is per Stokes. Lord has agreed to the rule but
Judge Rive supposes that a new rule is no
representation as in this case the distribution
is per capita.

Of persons related in equal degree to the
deceased no preference is given except that those
in the descending line exclude ancestors, uncles,
& collaterals of a later degree.

1845 25.50. 595.
1846 250. 2 Dec
203-5. 18th
454-5. Dec.
Chas 454 -

The per representation among collaterals
extends no further than the children of Brothers
& sisters. Beyond this kindred can claim in their
own right only, i.e. per capita. If then the
brothers & sisters of the testator be dead & a part
of their children also, those nephews & nieces who
survive shall take the whole, to the exclusion
of the grand nephews & nieces of the testator, i.e. to
the exclusion of the grand children of the brothers
& sisters of the testator. In status of the 2^d class
the mother is in the same rank with the brothers & sisters
in the distribution of personal property regarding her
one degree - but this is only where there are brothers
& sisters, or one & the children of the others living. If all the
brothers & sisters are dead she will take with their
children & they by representation not per capita.

1846 558.
555
1 Dec 204

Creditors & Administrators

The King in the same rank as a living brother.

In the distribution of personal property no distinction is made between the whole & half blood. The civil law which regulates distributions regards proximity & not the quantity of blood.

16 cent 316-17
323.425
Case 74.
Talk. 658.

If the father & the person deceased be living, the mother takes nothing because a ^{living} father she might take would be the husband's ^{share} after a divorce of the father & mother & she could be his executrix for administrative causes, the son dies living his father & mother, it is doubtful whether the mother be entitled to anything or not; but as the father's right to the personal property has ceased it would seem that she has a good claim on principle. If the divorce were only a mensa & she could not claim any of the personal property of her children while her husband was living, because the husband's right to her property still continues; but after her husband's death she might and in all cases where the marriage was not so void she is entitled to a share after her husband's death. Children in ventre sa mere are considered as in esse & capable of taking property according to the rules of descent & distribution; & in favour of such infants an injunction might be granted to stay waste.

Executors & Administrators

Lect. 4th

March 29.

These are the rules which are to be observed in the construction of the English Statutes of distribution. One thing more is however to be observed a Rich Nation, the symptoms of the Law on this subject. The Grandfather is preferred in favour of the Brothers & Sisters when they are living - There is no satisfactory reason given for this, even by Lord Sandwicke who would have found one had there been any - I think this question would make a figure in a court where there is no Statute regulation to govern. Generally Statutes regulate this.

It may be useful now to attend to a few

Cases of Distribution -

J. died intestate, leaving relatives in the descending, ascending & collateral lines.

1st Case - He left A. B. & C his children. They take his personal property in equal shares.

2^d Case. A was dead leaving children D, E, & F. B & C take as before each a third, & D, E, & F take the other third together, viz. what a third father would have taken - i.e. they each take $\frac{1}{6}$ of the whole & representation.

3^d Case. B was dead, leaving G & H children - C takes $\frac{1}{3}$ & G $\frac{1}{3}$ as representatives of his father B. & D, E, & F each $\frac{1}{6}$.

Executors & Administrators

4th case - C is also dead leaving children H. J. K. - D & E,
G & H & I have each $\frac{1}{7}$ of the whole per capita, being
in equal degrees

5th case - as the second only D was dead leaving D & H -
A & B take each $\frac{1}{3}$ & Lock^{case} $\frac{1}{4}$ as representative D -

6th case - as the second but E & F were dead leaving no
children one child son J & P - G & H take each $\frac{1}{3}$ - D & I
& A & B $\frac{1}{4}$ each -

7th case - J. L. his children & grand children were all
dead - the grand children leaving children in unequal
numbers - but they all take in equal portions per capita
except of him -

8th case - as the first only J. L. left a wife, wife has $\frac{1}{3}$ -
A, B & C each $\frac{2}{9}$ of the whole -

9th case - L. L. left neither wife nor issue - His relations
living were Reuben Stiles his father Mary his mother -

& Son Dick & Sal his brothers & sister, John & Susan

Rose his ^{brother sister & half blood} ~~uncle & aunt~~, George & Edmund Stiles, uncle,

& Simon Stiles his grandfather & Nathan great grandfather
His father takes the whole -

10th case - same only Reuben is dead - Distribute
as tho the 1st case had never been made, & also as
that statute requires - say that stat. Mary would have
 $\frac{1}{6}$ & her brothers & sister $\frac{1}{6}$ Had that stat. never been made
Mary would have taken the whole -

Executors & Administrators

11th Case. Mary is dead also - Distribute as if there had been no decision respecting the grandfather & also according to the decision - Had there been no decision then, the grandfather & each of the mother & sister would take $\frac{1}{6}$ - But by the decision he is excluded & each of the mother & sister take $\frac{1}{5}$.

12th Case - Solomon is also dead & Tom is dead leaving A & B - Dick takes, John & Susan have each $\frac{1}{5}$. A & B each $\frac{1}{6}$ as representatives of Tom.

13th Case - The same only Dick is dead leaving C - Sally John & Susan have each $\frac{1}{5}$ - A & B each $\frac{1}{10}$ + $\frac{1}{5}$ as representatives of Dick.

14th Case - Sally is dead leaving D & E. John & Susan are dead without issue - A, B, C, D, E, George & Edmund & Latham have each $\frac{1}{9}$ per capita.

15th Case - The same but Mary is living - Mary has $\frac{1}{4}$ A & B each $\frac{1}{8}$ C $\frac{1}{11}$ + D, E & F each $\frac{1}{11}$.

16th Case - same, only Mary is dead & Solomon is living - Solomon takes the whole -

17th Case - same only Solomon is dead. A, B, C, D, E & F, George & Edmund & Latham each $\frac{1}{9}$ per capita.

18th Case - Latham is dead, & A is also leaving G. - B, C, D, E, F, George & Edmund each $\frac{1}{9}$ per capita.

19th Case - George is dead leaving H & I. - B, C, D, E, F & Edmund each $\frac{1}{6}$ per capita -

20th Case - B is dead leaving K & L, C is dead leaving M, N & O.

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(D is dead leaving O & L. O is dead leaving R S & W. This dead leaving O - Edmund takes the whole -

11th Can - Edmund is also dead leaving H & G - G. H. I. K. L. M. N. O. P. Q. R. S. T. U. V. W. X. Y take 1/8 per capita

Law for distribution under the 10th & 11th Statute

Sec. 5th The right of the wife to the personal property of her deceased husband is secondary. She has no claim until all the debts are paid. She then has a right in the surplus. This is very distinct & different from her right of dower. There the property is real & she is preferred to creditors.

(Advancement -

Co. Litt. 176

By Statute of Car. 2^d every child except the heir at Law, if he has received an advancement from the father during his life, shall in order to be entitled to a distribution share under the Statute of Distribution, bring what he has thus received into hotch pot.

No money is considered as advancement unless it is so expressed to be. By advancement to a child is meant something to set him up in the world - A college education is in this country perhaps considered as an advancement tho' it is not strictly so by the common Law - any money thus advanced may be so considered if entered on book as an advancement. The rule just laid down under this head operates as an advancement only where the father dies intestate as to such

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his property - and therefore if he dies intestate as to part of his personal property, a will advanced by him during his life time need not bring such advance-
ment into hotel pot in order to have a distributary share of the part as to which he died intestate -

21 W. 2 342 Rem 638 Ration is given for a marriage settlement
2 Mac 430. Ex. 6 a 249 is an advance portion.
2 Mil. 435 --

It seems that the doctrine of advancement does not prevail where a man has property of which he is ignorant, or which he has not notice in his will.

When a man gives a greater legacy to one child than to another & dies intestate as to part of his estate, this is not in the nature of an advance-
ment, for an advancement must be made in the life time of the testator, & such will be distributed according to the Statute of Distributions

Stat. of Can. Personal prop^y is distributed as Stat. Can. & so generally thro' U.S. In the collateral line Stat. Can. prefers brothers & sisters of the whole blood & their representatives, to all the next of kin in collateral degree - i.e. it excludes rather mother & uncle & all but the lineal descendants. In default of lineal descendants & brothers & sisters of the whole blood & their representatives, personal estate goes to the parents - In default of them to the brothers & sisters of the half blood & their legal representatives to the exclusion of the grandfather -

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By Stat. of Bon. there is no representation ^{brother's} beyond ^{brother's} children as by the Bay Law. In default of them the estate goes to next of kin always preferring the whole to the Half Blood in equal degrees —
(Cases of distribution omitted)

Duty of Executors

Lect. 4th

The first duty of an ex^r or adm^r is to make out an inventory of all the estate which can be assets in his hands & to procure an appraisal of it by judicious persons under oath. After this the ex^r or adm^r must account with the Court & provide for the property inventories, but he is not liable or at all answerable to pay the amount of the appraisement of the estate he sold for less than the appraised value, the ex^r is not liable for the loss so unless it was incurred by his own fraud or negligence; & even if the loss be thro his fraud or negligence he is then liable on his bond to the creditors — in consequence

But if creditors sue in common for a their debts they must ground their action merely on the inventory.

The will is the Law for the ex^r for a man has such a Dominion over his property that he may dispose of it to whom he pleases after his death — I shall first treat of the Ex^r duty respecting the payment of Legacies when all the debts have been paid.

See the 285.

2. Brev. 466.

2. Brev. 512.

A Legacy is defined to be a gift or bequest of particular goods & Chattels by testament. The person to whom it is given is called the Legatee, an ex^r to whom a legacy is given may not prefer himself as an ex^r.

See the 434.

2. Brev. 512.

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A Deed strictly does not concern a Legacy, for it is a conveyance of property of a real nature: Tho our best writers confound the terms.

A Legacy of personal property is distinguished from a Deed of Lands inasmuch as devised Lands vest immediately in the Grantee of the Deed as much as tho the property had been sold to the devisee. But a Legacy goes to the Ex^r & is trustee of it & must join in some way deliver it to him before he can use or controul it.

The Ex^r may want it to pay the debts, & in such case it is lost to the Legatee but when he is not wanted for this purpose, if the Ex^r refuses to deliver or pays it to the Legatee, he will be liable in suit by the Legatee for a breach of trust.

If the Ex^r assents to the Legatee taking the Legacy & then refuses to deliver it up when called for, he is liable in Trove, for the assent divested the Ex^r of his legal title, & he is guilty of a tort in withholding it. This however is true only where the legacy is specific.

3 Dec. 1787. If the legacy is pecuniary the assent of the Ex^r makes no difference in his liability. He is liable to no action by the Legatee on this account.

Legacies are pecuniary & specific.

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Notes 25.

1 Bern. 31.

2 do. 688.

1 P. W. 422.

2 Galt. 416.

Moore 413.

3 Ark 96

Bro. Ch. co. 60.

Specific legacies are requests of things specific.

Pecuniary legacies are requests of sums of money made in general terms which do not identify any particular parcel - a request for so much money contained in a certain drawer or bag is a specific legacy as much as a horse. This thing itself makes the legacy specific.

Pecuniary legacies are liable to creditors before specific - specific are liable if there be not assets sufficient.

But if part of the specific legacies be taken to pay debt, the legacies whose parts are not taken are compensable in Chancery to make a reasonable allowance to those whose legacies have been taken. Suppose a case where all debts & legacies have been paid & there yet remains £1000 in the hands of the Ex^r. The testator meant to dispose of the whole & the will is silent as to this residuum. This in general there is a residuary legatee. The nature of distributions does not regulate this property, for that would be to regulate property of a man who die "intestate", but in this case he meant to dispose of the whole - The Common Law rule is that the Ex^r must hold this estate; but Chancery has gone contrary to the Common Law principle & we have generally adopted their rules on this subject.

By the Common Law in Ex^r had the legal title, & it was supposed that no one had the equitable title.

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of course no one could call it out of his hands. It was indeed said, that the Testator intended that the Ex^t should have it, but this presumption has been rebutted in a thousand instances. As where a large sum was given the Ex^t by the will - The principle on which he could hold it, was in truth that he had it & the legal title to it, & would claim it as a thing found. But the Courts of Equity have adopted this rule: If this can collect from the will itself by necessary implication that the Testator had no idea the Ex^t should have the estate he shall hold it as a trustee & distribute it according to the Statute of distributions. When he has discharged the trust to Debtors & Legatees he is then supposed to hold the residuum as the will of the Testator which is presumed to be, that those who are his nearest relatives should have it. When the presumption that the Ex^t was to have it is removed, he is then to distribute it.

In England the Law gives the Ex^t nothing for his trouble, & if there is nothing given him in the will & there is a small residuum he will leave it. But if there is a reasonable legacy he will not.

In the U. States generally the Ex^t is paid for his trouble per diem by Stat. on such a Stat. on the ^{residuum} ~~legacy~~ & no presumption that

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He should have the residuum -

In Law then the Ex^r holds the surplus absolutely.
 35 Nov 40 In Equity he holds it as trustee such is the presumption in
 2 Dec. 91. 151. Equity - & the rule is that, parol proof may be introduced
 30th 226 To rebut a presumption in Equity which arises against
 2 Dec. 104. 67 1/2. a construction of them - & parol proof may be introduced
 677. 757. 361. to show that the testator designed that the Ex^r should have it -
 30th 226. 68. to show that the testator designed that the Ex^r should have it -
 10th 313. 1st 473
 11th 55-4. 1st 568. Have the residuum -

In one case a man made a will & gave his estate
 principally to his remote relations & to his near relations one
 shilling each - There was a residuum; in this case it was presumed
 the testator did not mean his near relations should have it
 It was contended that the Ex^r should have it & so I confess
 it seemed to me - but the Court ordered a distribution to the
 nearest of the relations.

The next which naturally presents itself is the
 case where the estate is not sufficient to pay the debts &
 legacies - Here the Ex^r must in the first place pay the
 11th 84 debts - next, he must pay the specific legacies if enough
 200-688 remains, for they have precedence of pecuniary legacies.
 2d 416. If pecuniary legacies are to be paid - But
 the specific legacies are a debt which pecuniary legacies
 do not - for if the article bequeathed to them be lost their
 legacy is gone without remedy - but if a pecuniary
 legatee loses his share, all the legatee shares the loss -
 There was a curious case of a specific legacy lost in this
 manner - when Lord Royal in Jamaica was bequeathed a specific

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Legatee lost his legacy & then, but the testator's estate in the country was large. The Court however in this case determined that he must lose the whole -

There is a peculiar kind of pecuniary legacies which take rank of all specific legacies: as a son or man gives all his estate personal money, cattle &c to A & directs that he & B should pay \$500. Here the Ex^r holds the property in trust, & it may be intended it is to pay the \$500 to B & continue to A. The legacy to A is specific to B pecuniary yet we see the latter takes rank of the former.

Again, in a case where the specific legacies were all paid & a \$1000 remained to pay the pecuniary legacies to A & B & C who were each by the will to have \$500. The Ex^r must divide this \$500 between them equally -

But in a case where there are no pecuniary legacies & all the specific legacies can be paid, but one, which is wanted to satisfy a debt, that legatee must lose the whole & the others will not be obliged to contribute. (quasi)

The Ex^r acts which legacy he will take - There was one decision in Chancery that all the specific legatees should contribute - which I think with the elementary writers to be the best rule. The all other decisions are against it. An Ex^r upon the principles of the Common Law is not obliged to pay legacies without a bond to refund if any debts should afterwards appear.

Ex^r 467.

Moore 413 -

Law 4195 -

1844 422 -

1844 505 -

21 Nov 11. 285

1844 358 -

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If Legation, see 15 Jan. that time cannot get her answer. That
will tend to. Ad. If Gov. will accounts or demands must
be exhibited within a limited time, so in Mass. Hence there is no
difficulty on this score, but in Eng. there is no time fixed
or beyond which an account may not be exhibited for
payment to the Gov^t

Where a number of persons are given to the
Testator says B shall have his at all events, first of all, fall
short of paying the whole B, must abate with the other co-tentors
ing. Now the rule is that the wife of the testator shall govern
unless contrary to the rules of Law - In this case it is not ^{expressly}
provisional. ~~to one~~ ^{to one} beneficiary legatee to another, hence any expenses
will make no difference.

est may take a specific legacy, & turn it into money when it becomes necessary to pay debts, or a fine it is matter of prudence to do -

Lecture 8th When a testator in case of debtors, & assets
leaves the legacies, & one debt remains unpaid, he must
and it is so seen by that out of his own pocket you will
and his own folly, to pay all the legacies, before all the debts.

If the ~~not~~ supposing that there is an ample property
from all the legacy, & all the debts, but one & then another
fail it is said he will have relief in equity. but he will not
unless he was ignorant of the debt, & took no bond of the legatee.

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I think his situation Equity will compel the Legatee to relieve - but they would not if were to pay a legatee for he must have known this.

By way, if a Legatee takes his Estate & then to get a Legacy & the Ex^r not knowing the existence of a Debt, which becomes a collection where the Legatee cannot recover, says it under the direction of a Chancellor the Legatee must afterwards refund if a Debt arises & the Ex^r is not obliged to pay from his own property, but if there were negligence the Ex^r knowing all the debts, & thinking the estate is ample, says all who apply to a Chancellor is called for, & the assets are exhausted, he cannot compel the Legatee to refund, unless they have given bonds to do so. The Ex^r must lose the whole for there is no Law of which I have knowledge which can overrule the Ex^r is calling on the Legatee.

1 Nov 90. 45.

453

2 Dec 205.

2 Dec 153. 596.

This view against the Ex^r is contrary to one way. Altho the Ex^r cannot come upon the Legatee, yet the creditors may abandon the Ex^r go in equity against the Legatee, upon the principle that assets should go to pay creditors, & if the Law go into the Land & Legatee creditors may pursue them.

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Where a Legacy shall be a satisfaction of a Debt or Duty -

Where has been a complete revolution in the Law upon this
2 Dec 409
636. 12052 Subject within a century. Where a man makes a will

200.
Re 64 138. & gives a Legacy to his creditor that creditor accepts
1871 141.

2 no 616. the Legacy it was formerly considered that the debt was
satisfied & so was the rule. It was equal & superior to the debt
but not otherwise. The history of the rule is now settled is

this. A man owed £100 & gave him a Legacy of £200. A
creditor accepted the legacy & demanded the debt likewise. But the
Chancellor said in this case that he should receive the debt, not

withdrawing the rule, if the legacy was not in specie with
the debt. Then came a case where a man gave in specie, but

the debt was to be paid in 12 months & the legacy not
till the end of a year. Here the Chancellor held that it must
not only be in specie but payable at the same time &

ordered the debt to be paid. There also came up a case where
both these points concurred & then it was held that the legacies
were not to be paid, until the first debts were paid according to
the tenor of the will, of course the debts should be paid.

But then a case arose where the two first points con-
-curred & there was no clause in the will directing the first debts
to be paid, & here the child being a natural one to whom the
testator left his father had given the note the Chancellor ordered
it to be paid & called it an anomalous case.

Circulators & Administrators

1 Nov 1829 395 And again in another case it was ultimately decided that
 2 Dec 1829 250. There must be a plain words indication of the intention
 3 Nov 207 do 410 That the Legatee shall go in satisfaction of the debt
 2 Dec 1829 250. or it should be otherwise considered & the debt should be paid
 2 do 366 - 6

Some of the authorities here given seem not to support the doctrine as laid down on first reading. But the fact is where they seem not to agree to the use of a double portion & with regard to that the Law is as it was -

Cumulative Legacies -

Where a man gives in two different places in the same instrument the same sum to one person. He shall take but one. Given the same words - But if the same sum be given in the same words in two different instruments the legacy will be cumulative & the Legatee takes the whole - or if the words sum be in a codicil or there are three or four codicils to the same will each giving an additional sum to the same person, the Legatee will take the whole - the legacy is cumulative - If the same in the instrument were separate & the intention is evident. When the legacies are not cumulative, in case two are given in the same will & words of the same amount, the Testator is supposed to have forgotten the first -

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When one gave a note to a person & then gave the same sum to him in a note & said I gave the note the
 10th Dec. 17th Question came up whether this was a two instrument & should
 425- be cumulative - I was determined in all Courts, there about
 359- the note here was the same as a codicil

At the Disposition of Legacies

Adm. 520- Redemption of a Legacy is the taking away a legacy
 3 Bac. 470- which was before bequeathed. The redemption of a legacy is never to be presumed - but always must be proved.

It may very often be extinguished by the happening of something after the will. The testator may expressly revoke a legacy given to one in the will.

The common law principle was that he might revoke it by word. He may now revoke it by writing & it falls into the residuum. It may also be revoked by giving a codicil & giving it to another in the codicil as I give the bond of A to B in the will & then in the codicil I give that bond to B - B takes the legacy, & it is revoked as to C - The civilians call this translation not ademption. The elementary writers have shown some principles on this subject which altho not supported by authority are consonant to reason. The principle that if the thing given is destroyed the legacy is deemed as where a house is given & dies -

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In one case a man made a will & gave a ship to his wife. He recovered of his sickness in which he made the will & used the ship, repaired her, & died leaving the same will. The Legatee sued for the ship & in proving that the keel was the same, this was adjudged as sufficient to identify the ship & he recovered her. If the ship had been destroyed & another built of the same name,

size & shape, it would have been otherwise. So if a house is burnt & another built on the same spot, it would not pass to the Legatee.

A man gave in his will a Barn & a hat grain there was in it in his sickness. He recovered & used the grain & at the end of 10 years died leaving the same will & a grain in the barn then there was when the will was made. The Legatee brought an action for the grain & the Court said he should have to the point what there was when the will was made - on principle I cannot see that he should lose the grain for it has been used & of course lost. It was not that grain.

Now frequently give in Legacies notes, bonds &c. against their debtors, as I give to a £500 in a bond against. Now if the tutor while living attains & receives the amount of the bond, it has been said that it may be considered as an accomplishment of the legacy. But if the bond is paid voluntarily by the Debtor it is no accomplishment of the legacy.

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The distinction was taken that if the testator died & obtained the amount of the bond, it was an ademption. (See the note & now qualified & read thus. If you can account for the suit in any reasonable way & still suppose that 18 Nov 395. He did not intend to redeem, it will not be considered as an ademption. as when the Debtor was about to fail - or where testator owed & was in want of the sum & there is no that more voluntary & compulsive payments differ very little -

Where father died & then ademption -
Testator recovered from his sickness & in which he made the will & does the same thing in his life time when was to have been done under the will, this is an ademption as when I was about to have a daughter married & in 2 Nov 75 sickness gave her by will £500 - afterwards recovering at her marriage he gave her £500 in his life time & now it nothing express appears contrary it is an ademption.

Open - A man made a will & gave to all his children an equal sum & then said "I give over to Robert £500 to be used for to build him a house - he recovered & during 1 Nov 95. his life he built his son a house of more than this value & then died leaving the will, this was determined to be an ademption.

Where a man gave by will in his sickness £500 to each of his 3 children & afterwards purchased a cornet's commission for one of them, it was determined that this was a satisfaction for that of the legacy -

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In line for the intention of the Testator, & if not contrary to Law & you have then the Law respecting legacies, & so too respecting wills.

Lecture 9th When a man gives in general terms for his personal estate the whole which the Testator has at the time of his decease will pass without any reference to what he has at the time of making the will.

But it is otherwise when all one's real property is devised, for in that case none passes by the will but what Testator possessed at the date of the will. The intention is to govern; but the rule of construction has established the principle as it respects personal property. The Testator knowing the law if he designs differently can mention it in his will. But I think the rule has been extended in this case farther than necessity requires.

20th Nov 137-
598

A man makes a will & specifies part of his personal property in general terms, the whole of that species of property which he has at the time of his decease will go by the will; as a Librarian

10th Nov 424-
597.
Patel 237.

Real property may be made to pass by a will made 10 years ago, which the testator purchased since the making.

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Of the will if the will has since the purchase been republished; for the will speaks from such time, tho' the language of the will is not expressed by the republication.

A devise is sometimes limited in the will some times extended beyond it. As a late I. lived in L 10 years ago, at that time made a will & gave to the corporation of L. £100 in these words "I give £100 to the town in which I live" & then removed to H where he died. here the bequest is evidently to the town of L, but had the will been republished in H it would have gone to that town.

About the greatest dispute which has arisen was in a case where the testator said "I give to my children £1000 each" did he mean those unborn as well as born? Suppose after making this will he has as many children as he had at the time of making it. Some are of opinion that none but those who were in being at the time of making the will should take under it. Others say that all should take equally. But suppose a stranger gives to the children of I. £1000 each. In this case it is agreed that he means only those in being at the time of making the bequest. The current of authorities is that the father meant only those in being at the time of making the will, & they alone, the legacies. the remainder of the estate.

Co. Dec. 112. to be divided amongst all the children. But there are
Red Chan. 470. some authorities contra. So that the question is now

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2 Ves. 405 — Open to discussion. Judge R's opinion is against the consent of authorities. In the estate of Legacies, are there given by a parent all the children should take equally. Now the parent is bound to provide for all —

An Infant in ventre sa mere has been considered as a child in law the father dies leaving a will giving all but 1/3 to a stranger —

2 Ves. 405 — An ^{Infant} who was born after the Request came in for a share & all took per capita. In such case when there are no children, such estate shall go to the grandchild rather than fail — Where the will can thus "I give to my relation, a much property"; it will be divided among them according to the statute of distribution. — Where a man in the same manner gave by will property, & his "near relations", it was divided in the same manner —

Vested & Lapsed Legacies

A Lapsed Legacy is one which cannot be taken by the legatee, but sinks back into the residuum —

A vested Legacy is one, which of course vests in the legatee in his representative & the inheritance is changed —

2 Cy. at 296.
18 Nov. 1700 —

If a Legatee die before his testator his legacy is Lapsed

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^{in case that it may not appear}
But the words in the will must be descriptio personarum; when
the estate is given to one & his heirs, the word "heirs" is used to
show what kind of estate is meant - 1/1 the word "heirs" may

be used in a descriptive sense, & the heirs may be
the heirs of the testator, or the heirs of the person who is
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21 Jan 1839

The Eng. Court of Chancery has declared however that if a legacy is given ante & the testator has directed that interest is to be paid annually, it shall not be a lapsed legacy because the intention was evident —

Thus a man said "I give & bequeath my children so much, & then "if any die I give it over to the others" it was said that the meaning was if any die before 21 There was a case where one at 65 died & it was given over to the surviving — how can the Court will supply the deficiency post & the surviving "if any die before 21 or before marriage?"

21^{pm} 24th
2nd 8.

If a legacy is charged upon lands & the legatee dies before 21, it has been ordered to be paid without regard to the words to be paid —

Lecture 10th

It is a general rule in all cases of grants &c if the condition is precedent, the grantor &c cannot take the property until the condition is performed.

But it respects wills, the Law is different, for if the condition is illegal & precedent it need not be performed, & the legacy will vest. The distinction between precedent & subsequent condition does not take place in the case of wills. The Law in this respect respects principally to those cases who have been entitled

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Some marriage is with particular persons, as where a Legacy is given to one on condition he to marry a particular individual or breed. Such condition the Legacy is void. But the condition is frequently relative to the will, as where a Legacy is given to one on condition that he will not contest the will. Here the Legacy is good, & the condition is void.

The cases which we found in the books are principally those which impose restraints upon marriage.

A Legacy given to one upon condition not to marry at all is good if the condition is void.

It makes no difference in the cases whether the Legacies are given one to others; if the last condition is broken, the last is void. There is one exception to this rule founded on the interest which a man is supposed to have in his wife after his death if he has children by her. If in such case he gives a Legacy to her on condition that she do not marry again, the condition must be performed, or she cannot take the Legacy. Had a Legacy with such a condition been given to her by a stranger, the condition would be void, for he has no interest in her post children.

3 Bac. 479 note
To have the condition binding, then the must be the wife of the donor & have children by her.

Restraints of some kinds may reasonably be imposed by a condition in a Legacy, as where a Legacy

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is given to be void if Legatee marries for daughter, page 16
 The condition has been adjudged reasonable so when L
 restrained his son from marrying before he was 21, one
 who has no interest anyway in his bequest may
 impose such a condition & it binds.

As to place where one shall be married it
 has been held that there might be a valid con-
 dition as that a daughter should be married at a
 particular mansion house. This condition will
 bind if not unreasonable. The reasonableness depends
 on the distance &c.

In one case the Legatee was restrained
 from marrying one of a particular religious per-
 son & the condition was held to be binding.

There is another set of cases distinct from the
 preceding - as where the condition is that the
 Legatee shall not marry without the consent of
 a particular person or persons. Now in this case,
 if the Legatee is not given over, she may marry
 without such consent for the condition is void -
 But if the Legatee is limited over, if she does not
 perform the condition when she marries,
 the last legatee will take -

2 Van 293
 1 Kent. 199.
 1 Atk. 503.
 Pri. Ch. 565.

What words constitute a Legacy

There are no technical words indispensably necessary as in the case of a Deed. In the will nothing is regarded but the intention. If the Testator says "I bequeath" these words give a Legacy. This construction applies to devises of real property also. If the words show clearly the intention, it is sufficient.

But the same words will have a different construction when applied to real & personal property. Where the Testator says "I give my horse to A." It has been held the bequest the whole property in him. But if he said "I give the horse to A." He has but an estate for life.

There is no reason in the nature of the case for this distinction. But there was a period in the Eng. Law when real property could not be given but for life. In that time the devise of Waste would hold it as long as he could use for life. It was so understood of course.

After the Law was reformed that real estate might be devised for a longer time than the life of the devisee, a lawyer in cases so to devise made use of words indicative of such intention as "Bequeath" I have devised in the old form. He was supposed to give but a life estate. If he intended to give an estate tail he said thus of his property. The intention of the Testator may be collected not only from express words but necessary implication, as where one gave "£100 besides his cloak" it was clear that he intended to give his cloak also. In a case where one in his will gave £100 to A. & then said "out of the £100 which I give A. I give £50 to B." It was decided that there

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words of diminution are used thus take away the whole from the first Legatee, & it was a hollow defeat of his Legacy - Tho it appears to me that the Testator desired the £100 to go in equal shares to C & S.

When a bequest is made of a particular thing, described to be in a particular place & it is not there found, as £100 in a particular drawer, the legatee must lose it & the legacy will not be taken from the rest of the estate.

Where one gives money to be disposed of at the discretion of a third person, & this discretion is abused Chancery will in some cases interfere & prevent the abuse. Tho they are tender in this point.

One died leaving a daughter by his first wife & one by his second wife, & bequeathed £100 to be given to his daughter at the discretion of his wife. This discretion ought to be exercised in a rational manner by the wife. Mr. Peers had a trustee - But the giving the whole to her own daughter, Chancery interfered & said she had betrayed her trust - There is a singular case in the books A Testator in his will gave to A as trustee £100, to dispose of it as a particular writing contained in the chase of his desk should direct. The writing could not be found. The question then was, whom was the £100 - The legal title was evidently in the trustee, & I see not how he should have kept it on strict legal notions, for there was no one who could call it out of his hands.

Mass. 858

3 Dec 513 -

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But I was not intended that he should have it. Why this
injunction? Is he not trustee for the next heir as the Ex^r is?

A man devised Lands to pay Legacies in this manner -
"I give & devise my Lands to be sold to pay Legacies, & my daughter
a £400 - to my daughter B £400 - & to my daughter C as much
as my Ex^r shall deem proper." The total sale was £1,500 -
& Chancery on application of Trustees ordered him to dis-
tribute the remaining £300 cash, i.e. that the surplus
should go where by Law it could.

It is necessary to ascertain how far the doctrine in
operates in the country by construction.

When Lands are devised to be disposed of to pay
debts we should suppose that the Testator meant that his
personal property should be received from the debts to
be disposed of by the Statute of distributions. But in Eng^l
Lands thus devised cannot be sold to pay the debts until
the personal property is exhausted then construction of
the will is, that it was given only on condition that the
personal property failed. In Con. Lands thus devised must
be sold, & the express will of the Testator is to govern as to
against the rules of Law. The English Law favours the heir
extremely which was the ground of their determination. But
even there, if the Testator expressly directs that he Ex^r
shall first sell Land to pay the debts with the avails, he
must do it. If Lands are devised to pay debts & Legacies
in England, & the creditors exhaust the personal property
with the Lands of the Ex^r the Legacies can compel sale of the Lands.

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Formerly, & here personal property is once given he began there could be no limitation of a remainder in it. for by the bequest the whole interest passed to the donee. The use could not be given to one, & the fee to another -

But now (in England & America) Some kinds of personal property may be given for life with a limitation over in fee - as plate, books &c. The presents must be of a durable nature. But whenever the thing so given is about in the way by the first estate the remainder man is necessarily defeated, for there is nothing left for him.

It has been a question whether money can be thus limited over - as a man gave to his wife with £400. It was said he gave her but the use of it was £12 to her.

But suppose the £12 would not support her - His meaning was to support her, & that she should use as much of the gift as was necessary for this purpose & that there was a residue at her death the fee, fee or remainder man should take it.

Personal property cannot be entailed, this upon the principle of Policy, for it would be much to the injury of Commerce. If a Legacy of personal property is given to A for life, remainder to B's eldest son, this remainder is good, but if it had been to a remainder to the Heirs of B's body - the limitation is not good - Why not let B in this case take it forever - This I think must be the intention. But the rule in such case is that A takes the whole.

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Donatio causa mortis

A donatio causa mortis is a specific present made by a person in contemplation of death.

The property must be specific & capable of delivery - the gift is parol - It is always conditional for if the donor recovers the donee is not entitled to the property.

How does this differ from a will by parol which is void? The testator might in his life time while well give away his personal property in what manner he pleased by parol & on any condition. In the case the condition is that he die. It must always be made in his last sickness.

The property should not be taken until the donor is dead. Immediately on the death of the donor it vests. But the Ex^r takes it yet not as assets for it is not inventoried he holds it as custody que trust to the donee.

See also 264
1st Nov 406.446
240.254.8

There must be something done equivalent to a delivery - Tradition or an actual delivery must be made - No Harlan obligates whether a chose in action can be given donatio causa mortis. The difficulty is technical. Choses in action are not trans-ferable at Common Law. The donee cannot sue for it for the action must be in the name of the Ex^r of course. The action remains subject to his control & he may dispose of it as he pleases or otherwise. I think however if the common law would say it to the donee he might take it. If the donative nature is may pass otherwise. It is the opinion seems to me that Statute for Chancery may protect the assignment & in other cases.

1st Nov 444.
2do. 242.356.
2do. 444 on 31.
- instant case.

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Lect. 11th There is one series of personal property which I shall mention, over which the power of the testator is different, & from that a high & precious inheritance is in the personal property. This is for years.

There are sometimes many & almost a great as you see a few months as for 10 or 11 years. The testator may create as many life estates and these as he pleases, provided all the donees are in esse as an estate for a year life & remainder to be for life remainder to be for life &c.

A man may die intestate as to his real estate & yet be subject to a Legacy.

WALK. 416. The Legatee shall have the same remedy against the heir to the same extent as the creditor or creditor would have had.

Where Legacies have been devised to pay debts, & the testator devised the personal estate, & the legacies remain unpaid, the legatees will have the same right in Equity against the real estate as the creditors would have had.

30th May 1722. This applies to cases where the Legatee goes to the heir but as to devisees the Law is different for there the legatee is specific & the devisee's claim is in tort to that of the Secondary Legatee.

Where there is a bequest of years to a for life remainder to be for life to the first Legatee must

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make not an inventory of the things bequeathed & add it in
the body of the will or probate that this may be known & given
the time when a Legacy is to be paid.

Where the time is fixed by the testament there is no question,
that is the time. But if not thus fixed, a year is always
L. 414. given the Ex^r for the purchase & settling the estate, &
payment within the time can never be completed.

Where a Legacy is given to be paid at a future day,
say to a child at 10 to be paid when of full age. In this
2 Vern 3.
199. 283- Case where the Legacy is vested, if the child dies before that
time & has an adm^r appointed, he must wait until the
Legatee would have attained the age of 21.

Where the Legacy is given over to another - the first
Legatee dies who was to take at 21. the second Legatee or remain-
-er man will take immediately, if there were no words of
restitution. As "I bequeath to A £100 to be paid at 21. - in case
of A's death to B. Here if A dies at 15. B takes immediately -
this is supposed to be the will of the Testator.

Interest to be paid on Legacies

Interest is not to be paid on Legacies regularly until a year
has elapsed after the death of the Testator - in the case may
be a legacy will draw interest from the death of the Testator
B. - it will be on Interest from the time the Legacy was demanded
from the ^{Ex^r} ~~Testator~~ in all cases, if a year had elapsed, after the

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death of the Testator & before the Demand of the Legatee.
 However the Legatee may sue him before he calls on him.
 But notice must first be given to a Treasurer for
 he is not supposed to know there is a Debt until he
 has been called upon - for his superior call on him.
 The Ex^r does know of a Debt & occupies a middle
 ground between a Treasurer & a Debtor -

There is one singular case in the Books where
 it seems the Legatee should have been paid interest.
 He was absent for a long time after it was due.
 Interest however was not allowed.

Provision for the regular & occasional payment of
 Legacies - where it is given to the Ex^r at 21, on interest -
 generally the Ex^r must see to the interest till such
 time & then account for his principal & interest.

The Legatee cannot get it out of his Landor -
 Can have a Legacy is to be paid at a time certain
 say in 18 months - if not then paid, & the Ex^r delays
 to pay interest. This depends on the fact whether

Dec. Ch. 115 - he is obliged to look up the Legatee & how a lat
 difference ought there to be between the will &
 the Law fixing the time. What has been decided both ways

When Legacies are payable at a future day
 & not mentioned to be on interest yet they are on
 interest as soon as the other Legacies are, tho' not demanded.

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A Legacy is given to a child of 15 years to be paid at the time of his marriage or age - If the parent has a power of appointment for his maintenance etc or interest by Court 301. If from the end of a year - it is not a legacy for age. 329. But at present - for the parent by Common Law is obliged to maintain the child till age - but any other person is not.

There is another class of Legacies given to any one - It includes all those where something which at the time of the bequest furnishes an increase is bequeathed.

As where a Legacy was charged upon stock &c. the Lands yield an annual rent or profit & interest shall be added on the Legacy. If in case the Legacy had been of stock, or in any case where the time at the time the legacy takes effect yields an annual rent or profit. In all these cases interest is to be paid with the Legacy from the time of the death of the testator.

Bamb. 4240 - The idea is that the thing itself with whatever incident to it shall be paid -

A Legacy is never barred by any Stat of Limitation Length of time may raise a presumption but presumption is not a ground of Limitation -

Pres. Cha. 223. Length of time is a presumption which barred a note, before the Statute of Limitations had been against it. 2 Vern. 21. 484. that in the case having been lengthened from 17 to 25 years.

I know not how far the Common Law rule with respect to an Ex. paying Legacies obtains in this Country -

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As an Executor ~~may~~ ^{is} an Executor Legatus is in fact
a guardian ~~whom~~ ^{without} a decree in Chancery
The common Law principle is that an Ex^r is guardian
3 Bac. 435- an infant quoad the Estate until he attains full age
since he cannot pass it over & free himself from liability
until that time without a decree in chanc^y or probate

As before observed the assent of the Ex^r is necessary to
vest the Legacy in the donee - the question then arises, what
is assent? "I give you my Legacy" is by no means assent
tho it has been contended that it was - There must be some thing
really essential of the Ex^r's assent & if the Legatee takes the
property ^{at} the time or without the assent of the Ex^r he is liable

How. 525 -
2 Vent 358 -
Ho. R. 59 -

A Legacy may be recovered of the Ex^r, if debts are paid
& assets remain, by suit in the common Law Courts or Chanc^y

Chanc^y assumes the jurisdiction on account of the Ex^r
being a Trustee, over whom of every class Chanc^y has jurisdiction
This is one species of Legacy over which Chanc^y has exclusive
jurisdiction - where a legacy is given expressly to be paid out of Lands
by the Ex^r - Chanc^y alone can compel a sale of Lands
by the Ex^r, who as Ex^r by Law, has no right to sell, & the eccle-
siastical Courts cannot compel a sale of land

at 120 -
no fac. 279 -
304

Where a bond has been given by an Ex^r for part of
the Legacy it is a question whether resort to recover the remainder
must be had to a common Law Court? Before taking the bond his
will was to ecclesiastical or Chanc^y courts. If the Legacy is dis-
charged by taking the bond, suit is undoubtedly to be brought at Law
3 P. 483. but suppose Ex^r gave a bond to perfect a sum of the Legacy he not paid
at a particular time - this does not discharge the Legacy but is only
an additional security to do the thing, If Ex^r promises to pay he may be liable at
Law

Dec. 12th When suit is brought in the ecclesiastical Court, or Chancery it must be for the legacy itself & not for the residuum. The promise to pay the legacy must have been on consideration in order to its validity - & that promise so unless all such promises were except made in writing.

2dalk 414
6 mod. 26.
2dalk 997.

If a legacy is charged upon land the Ex^r and Ex^{tr} has nothing to do with it but he is trustee to the Legatee who holds the land. Suit for such legacy is at Law - In Com. suits for the recovery of Legacies are never brought before Probate or Chancery, but in the Com. Law Courts - as for any other cause of action I know not that this is universal in U.S.

Where the Ex^r has assented to Donor taking a specific legacy & then withholds action is brought in Com. Law Courts for damages in withstanding & converting it to his own use - If he assents to the Donor taking a pecuniary legacy - the assent makes no difference in the Legatee's right of action, for this in such case gives no right of action, as the Legatee could never show what part of the assets the Ex^r had assented that he should take -

When an Ex^r is sued & wants to make a Defence he may under the general issue, plene administrator, give in evidence any thing he may show that he has been obliged to pay debts & specific legacies - But he has no assent and above to pay pecuniary legacies. If there remained enough to pay part of the pecuniary legacies say he has made out the bill, & then turned it to the Legatee - this is plene administrator - "Plene administrator" is no plea with respect to payment of debts, i.e. no defence against the action itself but of the receipt.

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If Ex^r is liable not only for debts but for what the assets would have amounted to by prudence & good management - For what is lost by mismanagement he is liable on the bond, for a breach of it.

of the payment of Debts

If Ex^r or Adm^r is liable for the debts of the decedent
 we have a simple inquiry especially if a debt is mentioned in the contract or will - there is a distinction in Eng^l between legal & equitable assets. Legal assets consist of all the personal property of the deceased in possession or which any one had in possession for him. His right of action for injuries or damages, all his choses in action or evidences of Debts.

Equitable assets are such as the Ex^r himself cannot get without the aid of the Court of Chancery - or more correctly now they are all those which it might have required the aid of Chancery to get.

as where a man devises Lands to A to pay his debts & after the Ex^r has exhausted all the assets there yet remain debts to be paid. In this case the Lands can not be sold if A refuses without the intervention of Chancery - The assets shall of course be equitable assets. Legal assets are to be paid out to the creditors according to their rank i.e. to specialty creditors, before to simple contract creditors -

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But where the assets are equitable all the creditors are on the same footing & each one shall have an average part, the simple contract creditor being on the same level with the specialty or bond creditor. If the bond creditors have been paid & then resort is to be had to the equitable assets, the simple contract creditors will first have half their debt & then the remainder will be divided in equal shares among them, on the par. Whatever vests in the Ex^r as a private

2 Decr 1764

Dev. 59 ^{note} individual, & which would not vest in him as Ex^r are equitable assets. Whatever vests in him as Ex^r are legal assets.

After all the personal assets are exhausted there is such a thing as real assets, which are liable to a judgment & specialty debts - but such creditors are not obliged to resort to the fund, for they may go upon the personal assets. The simple contract creditors cannot resort to this fund - What then shall they do when the judgment & specialty creditors have taken all the personal assets? They go into Chancery, pray to be put in the place of the bond creditors - which Chancery grants.

At Com. Law when the bond creditors had exhausted the personal fund the simple contract creditors were useless.

[vide Stat. 4 York. Vol. 1 for the relief of 6th as to Heirs & Devisees]

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Assets are liable to the Lien in some cases. This is
(called marshalling assets.

As far as it respects Legacies the Eng.
Law & the Law of Scot. are the same: as it respects
debts there is some difference. The doctrine of priority
is not known here except in the case of public debts & Bonds
& similar contract creditors are all on the same footing.
After the personal fund is exhausted, the second
fund is created from a sale of the Lands & all ^{are} ~~is~~ liable
to pay the debts.

Emblements, which are strictly those crops
which could not be produced without Labour, are
personal assets. Grass which is of spontaneous
growth, is not emblements. But a crop of Clover
would be. To an farmer cannot begeth the
Land formerly sown they were not & that the
chipping them is as too gross an invasion of the Land.
There are many things attached to the freehold which
are now decided to be personal property as kettles, cranes
firebricks Looking Glasses &c they all go to the Ex^r.

A Bond is not assets, until recovered, but
the title passes to the Ex^r & at the end of one year
whether he has recovered it or not, it devolves on the

to show for the presumption is that he has collected it -
When Executor appears he debtor an Ex^r it was formerly
Solder that it was a release, the debt it is now holden to
be such rule made. He cannot place here administrator
until he has paid, but if there is no executor or legatee
then he having the legal title as Co-Sure is entitled to it as
a remainder. If he were an administrator he would have
to distribute it under the Statute of distributions but as Ex^r
he does not distribute to next of kin.

160. 87-

2 Nov. 1772

As to the rule that he should be paid for his
trouble, the Ex^r ought if he was made a legatee to distribute

There is one species of personal property of a peculiar nature
which passes to the Ex^r it is a mortgage. In case a man
mortgages to B of £1000 to the value £1000 1/2 B dies leaving
to his Ex^r & to his heir the legal title is in the Ex^r for the mortgage
is personal property. The mortgagee must pay the money for
which the land was mortgaged to the Ex^r, & if he will not & the
heir forecloses him the heir must pay the money to the Ex^r before
he can Lord, or the Ex^r will otherwise compel a delivery of it
to him & it becomes equitable asset.

As to the Eng. Law relation to priority. The first
debts to be paid are funeral charges. debts due to the crown
Judgments & debts & mortgages are on the same footing. Then specialty
debts & lastly simple contract debts. Last known debts precede judgment debts

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The Ex^r is here a number of creditors are on the same footing, & all their debts are due may pay a bill & pass. Just unless some one has preferred himself by commencing suit.

In some cases of dissipated debts the Ex^r may pay simple contract creditors in safety, before bond creditors for he might not have known of the latter - even where there is no judgement creditor for as to he might have known this.

There is one being of special creditors as he must be postponed to all creditors, viz. voluntary creditors or those to whom the testator gave gratuitous loans. If the

10th. 29th -

were not the rule, the simple contract creditors might always be defeated - It is therefore a necessary one.

Such a volunteer is preferred to all others, & occupies a middle place between creditors & Legatees.

In case where the Ex^r supposes a bond thus given to be voluntary & the simple contract creditors insist that it was voluntary, the Ex^r may file a bill in Chancery & compel the parties to litigate this point. He is justified in withholding it until the point is judicially settled. If he pays it wrongfully it is at his peril.

2 Ven. 39 -

An Ex^r defence when he is sued by a creditor is by plea that the estate was so much "that Judgement & special debts are so much, & if they are to the whole assets, that he is not bound to pay the simple contract creditors" & concluded with pleading these administrators

Locut. Before an administrator is appointed the personal property vests in the Court which has some discretion in the selection of an adm^r - altho the law requires the next of kin, if competent.

The custom has prevailed of appointing the next of kin in the Descending line, where there were those of equal degree in the ascending line - but it would not be contrary to law to appoint one in the ascending line. Females as well as males may be appointed.

2 Bac. 505.

If the next of kin be a minor, the custom is to appoint one disant minoritatem whom the Court choose.

If a person appointed refuses the Court may then appoint whom they please.

If the adm^r dies before his power is executed any other person is appointed at the discretion of the Court De bonis non.

The reason given in the books why a minor cannot be made adm^r is that he cannot give a bond, which is required of an adm^r -

But by Law, an Inf^t at 14 may be an Ex^r & in this case there is a bond required here to. That consistently with common sense, we must say that the Law which says an Inf^t at 14 may be appointed an Ex^r

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represents that quoad hoc which says an Infant cannot bind himself in bond.

Now how does a Sub in Eng. they are compelled to go to Chancery to obtain, for there no bond is required of an Ex^r & Adm^r only can compel them to be given. The ground on which they go, in Eng. is that the Testator has reposed a confidence in him & he shall not if cause be compelled to give bond to be faithful -

2 Chanc^r 10152.

Now here it is necessary for bonds to be given, where a Legacy is to be paid 15 years hence Chanc^r will so order. They may compel bonds in many other cases, as where the court is suspicious that the Ex^r is in failing circumstances & has many creditors. But mere poverty is no cause for compelling bonds to be given, & itself.

Here they are required in all cases - not on proof.

In the first place the Ex^r or Adm^r is to make out an inventory of all the estate, & take persons to appraise it - In Lon. the Court appoints the appraisers.

The Ex^r or Adm^r has to account for the articles in the inventory, but not certainly for the exact amount of the appraisement - The assets may amount to more or less - & the object of the Inventory is to know -

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whether he accounts for all the personal chattels the appraisement is *prima facie* evidence of the value of course it should be *bona fide*.

If the Adm^r has not included all the personal estate in the Inventory he is then liable on the bond & not on the Inventory.

If he is ~~not~~ guilty of a breach of trust in underselling the inventoried goods he is liable of course for a breach of the bond or not having faithfully administered —

These powers granted to an Adm^r are very often revoked, when the Adm^r cannot execute the duty as he ought or where after Adm^r granted a will is found. But in such case what the Adm^r has done is binding & the remainder of the testator's will in the hands of the Adm^r will be transferred to the Hands of the Ex^r. The bond of an Adm^r to sue & recover is the same as that of an Ex^r & his liability to suits is the same. If two Adm^rs are appointed some dies, the power devolves to the other — This is an exception to the general principle "that where a power is committed by Law to a number they must all execute it & if one dies the other ceases". If only one Adm^r is appointed & he dies the power ceases, but if an Ex^r dies leaving an Ex^r & shall perform the power given by the will —

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If two Ex^s are appointed in a will, & one releases a Debt, it is the same as tho the release were by both.

12th. 460 - But not so with Adm^s for here the transaction must be by both.

The Ex^s & Adm^s stand in the shoes of the Deceased as it respects personal contracts entered into by him with third persons & which are not performed.

Bro. W. 377
177

Roll. 982

Lut. 126.

But the Ex^s & Adm^s do not stand in the shoes of the Deceased as it respects one class of actions. It is an old maxim that actio personalis moritur cum persona, formerly no action could be brought of a personal nature ag^t the Ex^r or Adm^r as representative of the Deceased - but the old rule has been very much modified & now am^t to no more than that all injuries to person & reputation die with the person & no action, of this nature could be brought ag^t the Ex^r or Adm^r. The Stat 4 Geo 3 declares that every man who took away the goods of the Testator should be liable to an action by the Ex^r or Adm^r. But this does not extend to the case when there was a destruction of the Property.

But the Court extended the equity of the Statute to such cases & said that whatever injuries are done to the Assets subjects the doers to an action in favour of Ex^{rs} or Adm^s as much as tho they had taken away the property - This construction has been the ground of the Common Law in this Country, for without any statute on the subject we have followed their constr^u.

When a Testator has committed a battery, he escaped the consequences by dying, for no action could be had against the Ex^r - So it is as to slander - But as to property which was wrongfully taken by the Testator, this cannot be recovered out of the Ex^r or Adm^t in the form of an action of Tort; but the action will be in another form, provided the Assets have been Benefitted. If the Testator kills the heir of another this makes the Assets were not benefitted & no form of action will give a right of recovery ag^t the Ex^r - I see no reason in this, for the estate ought to be answerable for his damage in this, for the estate ought to be answerable for his damage mentioned - viz, that ^{for} the personal contract of a Testator was the Ex^r liable. The construction of the Stat. 4 Edw³ 3^d extends a his liability for torts where the Assets were benefitted. I presume that now the Courts would go further.

47. 403.

1 Inst. 30.

1 Salk. 314.

6 mod. 125

2 La R^d

971 -

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See p. 1.

There is a case in *Keaper* to this point very luminous. It goes to show the Ex^r's liability where the Testator did any injury - The case is *Hamlin vs. Frost*.

The action against an Ex^r is in the form of an action on the case, facts are stated just as they exist & the value, & then a promise in Law is raised - The difficulty is merely technical.

If the specific goods come to the Ex^r which were wrongfully taken by his Testator the Ex^r on refusal to deliver them up is liable as any other person would be. An Adm^r has nothing to do with the Personal trusts of his Testator.

Where a man is made a Bailee of personal property for a particular purpose, as a Tavern keeper is of the horse of a Traveller, he may execute the trust in safety, & is justified in withholding the property from any one who claims to be the owner of it, until he produces legal proof of ownership - But if this trustee should die, his Ex^r cannot be compelled to fulfil this trust - But he must take care that he delivers the property to the right owner, for if not it is at his peril. If two demand it let them litigate the right. But the trustee might have released it to the Bailee with impunity.

See p. 1.

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When a creditor is made Ex^r or adm^r, as he cannot sue himself he may retain the debt of those of the same degree.

All chattels real & personal go to the Ex^r or adm^r. There are, however some kinds of property in one bond of view strictly personal which nevertheless do not go to them. Such as, fish in a pond, doves in a dove cot, deers a park &c. These go to the heir, & for this purpose must be considered as real property. But it is said if the doves are so young that they cannot fly, or if the deer should chance to be out of the park they are then personal & go to the Ex^r. Upon the reason of this subtlety is that they are considered to have something of the real nature about them -

Leases for years are strictly personal property & yet in bond we have been in the practice of considering them as real property where the leases are long - as for 999 years - I never could learn the reason of this exact number of years in the lease, but there undoubtedly was one at the time the practice came into vogue - A wife is here endowed of such property which is analogous to the consideration in case of Ex^r the a husband shall not have his country in them -

There was a species of estate in Engl^d which formerly went to nobody - This inconvenience was there remedied by Stat^s since, and immigration to this country & on learning which any of the States have no reputation

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This exists where an estate is given to one as A for the life of another as B. Here if A dies before B there was no one to take the residuum of the estate. It could not go to the Ex^r of A for it was real property it could not go to him who granted the estate for he had been paid for it. It could not go to the heir for he can take no estate but a fee simple or fee tail - this is not an estate of inheritance. It could not escheat because an escheat must be of the whole and all the property in the thing. It was then Caradigan's. The stat 29 Car 2 took care of this property & submitted it to the Ex^r. & now as this was made since we left Eng. where we have no statute on this subject the subjects must be in the same situation as which it was before the Stat. Car 2. We have no statute but the practice has been for the Ex^r to take it, & to get along with this our Ex^r said it adopted the reason of the statute of Car.

Emblements of a Testator are personal property - Where they pass by a Dev under some thing is express concerning them they are considered as real property -

D. 11. 2

Lect 15th There is one species of the husband's personal property which is governed by distinct Rules.

This is the paraphernalia which is said to belong to the wife. During his life the husband may dispose of it in any manner he pleases. In his death however it does not go to the Ex^r but to the wife who has immutably on the death of the husband an indefeasible right to the first kind of her paraphernalia, viz, necessary bedding & cloathing - & a defeasible title to the 2^d kind viz "trinkets" which include, lace, watches, rings, jewels &c.

We have seen in a former subject what a paraphernalia is & the distinction between the two kinds - Vol II 124-5 -

Paraphernalia cannot be severed away from the wife. In this it differs from every other kind of personal property.

After all the assets are exhausted, if debts remain the wife is liable to be diverted to the second kind in favour of creditors. This is a second point to which the Ex^r may resort but not till the 1st is exhausted. It can never be taken to pay legacies, for she is preferred to any creditors.

Paraphernalia is distinct from the wife's trinkets. In this case & above what the Law

gives her of her husband's real estate.

3 All. 346.

375-

Where the husband pledges the trinkets of his wife for a loan of money, he shall have rid of his estate to which her paraphernalia

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Again. Suppose a man should make a real estate to pay debts of the testator after exhausting all the assets should take the paraphernalia of the wife to pay the debts the wife will have the same right as if the estate which creditors could have had on failure of assets.

The case is the same where any real estate is given in trust to pay debts. If the trustee does not sell it the testator cannot touch it, but if he takes the paraphernalia of the wife, in such case she will have a right to go upon the land.

Att. 369.

3 of p. 50 note

1 de 29-

If specialty creditor have exhausted the assets taken in paraphernalia, she may go against the testator as the specialty creditor might have done.

Suppose that of have gone further upon application by the wife a real estate was about to be taken by specialty creditors while there was a deficiency of real estate have prevented them from going against the paraphernalia of the wife to seek their remedy against the testator.

But whether they would do it in any case depends upon circumstances. If the specialty creditors would not be injured by it they would probably in all cases to do so.

Should the wife ever touch in paraphernalia still the testator has no claims upon it if there be no deficiency of assets more than he has upon the estate of any other person.

In some of the States the real property of the husband is found after the personal assets are exhausted to pay debts. There arises a good question: Would it not be necessary that in such States the whole of the real as well as personal property should be exhausted before the administration is taken? Judge C. thinks it ought to be.

If any one claims that the Ex^r has not made a just inventory he may sue him on the bond, & then he must prove a breach & those interested in the estate must contribute to support the action.

Question of damages is always a question of Equity & when the Ex^r has sold out of the inventory a part of the property & turned it to pay debts of the Testator he may then have mitigation of damages; but he is still liable to judgment for costs &c for having broken a salutary regulation of Law.

Debts & notes that should be inventoried. By our Law practice this we see; but it has been said he need only inventory the money when collected.

The Ex^r is not answerable to the bond until he has collected nor for more than he collects. But I would say, even if the debtor is a bankrupt, that it should be inventoried to show what property the Ex^r has in his hands & if he gets nothing when he accounts, he may present the note & that will be sufficient.

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In Eng. the Ex^r is not liable to pay costs if he sues & gets defeated (w^h & unde^r g^t no costs). In Equity why should not costs be paid out of the estate of the deceased? It is because by the Com. Law no costs were given in a trial, but the punishment when the Off^r was defeated was fine & amercement. A Stat. first gave costs in one instance & then in many. But more Law has been made giving it in this case, so that the rule is not bottomed in Equity. (But in a Country where costs have always been p^d as in Com^t in all suits, they should in this case be paid out of the estate. In some cases, even in Eng the Ex^r must pay costs as when he declines in his own name & right. For then he is situated precisely as he would be in a Suit wholly his own.

Ballou 79.
Cro Car 289
Ment. 92.
Cro Car. 228
Yelv. 168. Latel 220
Cro Elia 69. 503.

Cro Jac 150 -
Cro Car. 59 -

Another privilege of an Ex^r is that he can never be held to bail as Ex^r. Said ag^t him must be by him more. There was a case where a man in N York was imprisoned as Ex^r & kept living in Com^t. The Ex^r sued the creditor for false imprisonment. The question was whether it was false imprisonment in N York or not. By the Com. Law he was not liable to this action & the Court s^d that unless the creditor could show that the Law of N.Y. was different from the Com. Law which is prima facie. He Ran in all the States & judgment should go ag^t him -

Ex^r de son tort

An Ex^r de son tort is a person who without any authority from the deceased or the ordinary does such acts as belong to the office of an Ex^r or Adm^r.

1 M. 407.
2 Bar. 387.
Loveless 51 -

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In general any unlawful intermeddling with the assets of the deceased will make a stranger an Ex' de son tort. But whether it be unlawful depends upon the nature of the intermeddling - If one milked the cows & fed the cattle of the deceased as a neighbourly favour, this being reasonable on the score of humanity, does not subject the stranger. But if he proceeds to discharge or collect the debts this will constitute him an Ex' de son tort. He is then liable to the extent

5 Co. 93-4
 Rolle ab. 725
 South 104.
 Inst. 349
 1 Salk
 313-

of assets, & if the rightful Ex' or adm't sue him, he cannot plead plene administravit, but what he has paid may go in mitigation of damages. The plea of assets he answers as an Ex' does, but in point of damages he is answerable for all losses & mismanagement.

Tho it is true that an Ex' de son tort is liable only to the extent of assets, yet if he pleads a false plea as ne unquam Ex' he will be liable to the whole value of the assets.

2 Bar.
 390

If he pleads the fact, he will be liable as Ex' only to the extent of what came to his hands.

1000 Bl. 630
 Str. 1106

He has all the burthens of an Ex' but none of the privileges. He cannot retain tho he be a creditor.

I do not think such a character can really exist in law on account of the average Law, where the estate is insolvent for if one creditor sues the Ex' de son tort, he will recover the whole to the prejudice of the other creditors. Hence this would destroy the effect of the average Law.

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Lect 16th An Ex^r is answerable to the extent of assets which are the avails of the inventory; when there has been any fraud or embezzlement of the property a recovery may be had in an action for a breach of the bond: Suit is brought & right of recovery is founded on a destraint in Reg.

The condition of the bond, where one is given is to "inventory the property & justly to administer, to account & distribute according to Law & on failure of any of these, the bond is forfeited & the Ex^r is liable — If he did not pay the debts, he is liable to a suit like any private person & the creditors will recover if he has assets or if there has been a destraint.

With respect to Law suits, he may commit destraint as well as in any other way. This is not ordinarily the case so he generally takes the advice of the Court. If he recovers or is defeated it makes no difference to him as to costs for Chancery or Probate will allow him out of the estate just his actual expenses.

Of a man's power to devise his lands for years the provisions laid down by the elementary writers are not so broad as the authorities will warrant. I formerly showed that he might devise them to any person in one but late cases go farther, he may now devise & limit remainders to any person or persons.

& likewise to the eldest son of one now in esse, when he shall have obtained full age - If the eldest son of the remainder man is not born until 9 mo. after the death of his father, he will take; so that years for years may now be devised for the life of any one now in esse & 21 years & 9 months after.

286. 174

398

P. Litt -

It would be against the policy of the Law to suffer a further limitation, as it would be creating a perpetuity -

A life estate may be created in a chattel interest as in a lease for 999 years - altho formerly differently held - This rule grew out of a mere technical nicety - It was said a greater could not be made out of a less & as a chattel interest was less than a life estate the latter could not be made out of the former - This was the fool logic; but the course of decisions have now settled it according to reason that it may be created as men do not now a days live 999 years -

Wills

Of those things which disqualify men to make them - The first is the want of discretion or a sound disposing mind. When this is the case which is a question of fact depending upon evidence, before the probate court the will will be set aside - A madman cannot make a will - Old age may disqualify one - A Lunatic may in a lucid interval make a good will - The Law has declared that an Inf - has not sufficient discretion to make a will of personal property until 14 of males & 12 of females according to

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Some not until 17 - from Law time seems to be 12 & 14
 In Court the time fixed by Stat. is 17 They cannot make
 a devise of real estate until 21 -

The ground of substantiating a will is different
 from that of substantiating contracts - a Drunken man's
 will is void & Fraud will always set it aside. But
 if his bargain is made when he is intoxicated, they
 will not if it be reasonable, intermeddle with it. It
 devolves on those who wish to invalidate to show its invalidity.

There is some difficulty as to the proof. To prove
 Lunacy or unsoundness of mind the testimony of neighbours
 is admitted. Their opinions with the grounds of them go to
 make the mass of evidence.

Deaf & Dumb persons it is said do not ordinarily
 make wills; but if those around them suppose they
 understand what they are about, the wills of such persons
 will be held to be valid - If a man be blind, &c. will
 which he has dictated must be read to him.

Coveless 148 on 38
 142 -

The case of restraint stands on different footing
 from devotes in other matters. Where there has been
 an unreasonable teasing or importuning so that a man
 has notoriously made a will contrary to his judgement,
 if he dies in that sickness the will is generally set
 aside - But if he should recover from the sickness
 & suffer it to stand for years it will then
 be good.

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In case of fraud by false representation, this will set a will generally where a man was deceived as to some thing except property, not sane as to that, & made a will, it was held good; for he was of sound mind *quoad hoc*.

Persons guilty of treason & felony cannot make wills of personal property. the reason is, it is forfeited.

Formerly there was a question whether an alien could make a will, but it is now settled that he can.

The last will is that of all which a man makes is in law the will. but if there is a republication of a former will, it will set up that will as a later one for it speaks from the time of republication.

In case of devises, if there is a revoking clause in a later devise revoking a former one, no republication will set it up. tho it will when there is no revoking clause in a subsequent one. If there are two contradictory clauses in a will the last will stands.

Witnesses to prove a Will.

Where Executors subscribe a will as witnesses, they are good witnesses to it by the Eng^l Law, for their Executions are void by Stat Geo. 2^d. If they discharge their Executions (here I should say they were competent witnesses tho the S. C. & Courts in this State decides differently reversing the judgement of the S. C. for interest was but a contingent possible interest. This never disqualifies a witness. They were then proper witnesses of the fact at the time.

See N.Y.

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A will of personal estate is very simple. The name of the testator any where written in the will is ~~to~~ make it valid without witnesses.

(And it has been decided that where it was written in another person's hand writing & not signed the will was good - I think however that signing is writing the name ~~the name~~ at the bottom of the instrument.

Reveries 154

2nd. 501-

In the last case it was proved that the will was written by the testator's direction. This may be done by parol evidence - Judge Reeve thinks it a dangerous proceeding & questions whether we should admit it -

The elementary writer lay it down as settled Law, that a will may be void as to real property & good as to personal property. But I do not find it so settled in the authorities. Such a principle would clearly in many cases work the greatest injustice. As when one has two sons & a large real & a large personal estate. In his will he gives his real estate to his youngest son & his personal to his first who perhaps is a merchant. Now if the principle laid down in the elementary be correct Law the younger son will not have a farthing of his father's estate. I should say, let it aside wholly or not at all.

C

Lech 17th Who may be Executors -

a. almost every one may be an executor it may be better to consider who is excluded from being an Ex^r

In Eng. some are excluded from being Ex^rs who would not be here. - These, persons excommunicated are excluded to Ex. 128 being ex^d for the ecclesiastical court has nothing to do wth such persons. This presupposes a crime; but I know not that any crime excludes a person the principle as to excommunicated persons has no existence in this

See Blin 142.
683.
Moore 431-

Country. In Eng. Alien enemies cannot be Ex^rs, the alien friends may be as to personal representatives -

Persons wanting discretion are not appointed Ex^rs nor are persons in habits of Lunacy. If one should be come Lunatic who is Ex^r the court will remove him they may appoint a Lunatic in a Lucid interval but when he becomes Lunatic they must remove him Discretion is here to be exercised by the court -

Shower 293-4 Poverty of itself is no objection to appointing a man as Ex^r - but poor persons insolvent will either Bath 457-8 not be appointed or will be compelled to give bonds 2 Vent. 24.

not be appointed or will be compelled to give bonds in Eng. In bond bonds are always require -

An Inf^t at any age may be appointed a Ex^r & under the age of 14 or person will be appointed & administer durante minoritate: after he arrives at 14 he may then administer just as an adult would, & is precisely in his situation except one thing - Should he ever fraudulently release

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560.24. Lons, of the Testator, he is not guilty of a de-
 tro (an 490) nastavit, for he is here shielded by his privilege
 none 582 & not bound by the transaction & is not obliged
 to perform his contract.

In the form of the writ he appears as any
 other minor does, he sues by guardian or
 prochein amy.

A wife by consent of her husband may be made
 an Ex^r but not without, for she ought to be subject to her
 none 298 - husband - If she is executrix before marriage he
 takes ^{her} subject to her duties -

MunICIPAL WILLS

A nuncupative will is a disposition of personal
 chattels in a man's last sickness by word. -

This kind of bequest has now fallen into disuse
 from the restraints imposed on it by Stat. Car. 2^d -

At com. Law it was a thing often & now, as
 few could write; but it is not necessary now - the
 power of disposing of property by nuncupative wills
 never extended to real property -

By the restraining Stat. of Car 2^d a husband has
 been adopted in several of the States, the will
 must be reduced to writing, read by the Testator
 & approved by him, if it can be done; & three
 witnesses must be produced to testify that this was

same but the
Act.

The case. It is then a will. & in this case it must not dispose of property to the amount of more than £30; ^{or equivalent in days} nor unless made in the testator's last sickness & at home, or where he is abroad taken in extremis, in which case it will be void, if he ever returns home. & it must in case of being in extremis at home or abroad be put in writing within six days, or else it is void after the writing is made.

Revocation of Wills

^{revocation in Reg. Vol. 10 p. 100}
The English Statute, 1. Revocation, affects both real & personal property & by that these three things can be a revocation -
1 Burning, cancelling or obliterating. 2 Some writing revoking the will. 3 Where it relates to real property, a written revocation subscribed by 3 witnesses.

The question now arises what shall be deemed one of these acts? What is an obliteration or cancelling? The intention is what is to be determined then that will govern. Yet if there can be shown that there was an animus revocandi connected with any act indicative of that intent the will as it respects property is revoked. Even a partial declaration will revoke such a will.

As it respects real property certain forms prescribed by Law must be observed as the having 3 witnesses &c.

Respecting implied revocations there are several things which amount to it, but they stand as at com. Law & the Statute has nothing to do with them.

When an old Bachelor makes a will & afterwards marries. The mere marriage does not revoke the will as I can find. but where he has children this has been

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considered as an implied revocation upon the presumption that he did not intend to disinherit, or that the will should stand.

But even the marrying & having children, will not ipso facto revoke the will - It must be connected with the intention to revoke - for in such case as the last mentioned, where the property was vast, & the children were on the whole amply provided for, as such a devise might be made by a man consistent with natural affection the will would be holden to stand, I should say, that the elementary writers are contra

to I suppose mere marriage might revoke a will - as where all was personal property, & the wife had a large real & personal property. If the will was not revoked she would be left in poverty -

In a case in S. R. the case of a posthumous child was put & as it clearly could not be the intention of the father to disinherit him, a will, ^{which} would affect it would be set aside - Here Lord Henson went so far as to say that there was a tacit condition annexed to the will, that it should stand provided no posthumous child was born.

Where one in a will gave a legacy to a man & then gave it to another who could not take it, as to a corporation, I think the first donee ought to take

But it is contended that the second Request is a revocation of the first - I ask how is this known? If the second could not take, the presumption is that he knew the Law & of course that this would not defeat the first donee -

Republication of a former will, revokes a latter - & a revocation of a latter will sets up a former one - Real property acquired after the date of a will does not pass by that will, the personal property situated would. This principle may produce great inequality & much injustice -

There is this difference between an Ex^r & an Admin^r - on the death of the Testator the Ex^r has the legal title to the whole of his personal estate before probate of the will & may pay creditors collect & release debts, & indeed has as much power as after probate, except that he cannot sue as Ex^r for in all such cases he must show his authority under the Court - He may sue in his own right for the Testator's goods before as where he sells

1 Talk.

306-7. a horse & takes a note to himself -

He is as liable to be sued before as after probate for any person who acts as Ex^r is liable to be sued as such whether he is Ex^r in his own wrong or not, for he is sued as Ex^r.

If therefore he should never prove the will he would be secure if he had no receipts to sue

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Every man may refuse this trust who pleases. The mode of proceeding in Eng^d is upon notice given to the ecclesiastical court of one being mentioned Ex^r in a will, the court issues a decree for him to come in & refuse or accept. He may then do as he pleases. But if he does not come in the court then immediately excommunicate him. In Con^t if one knows that he is appointed as Ex^r to a will he must go to a Court of Probate & declare whether he accepts in one month, or forfeit as a penalty £5 & 4 months afterwards as long as he neglects to inform the Court. If he refuses or neglects, some one is appointed *ad m^o* Cum testamento annexo—

Sec^t 18th

By the Eng^d Law, when more than one Ex^r is appointed & one refuses & the other acts, the refusing Ex^r may notwithstanding the refusal, come in & act when he pleases. But where there was but one & he refuses to act, he can never afterwards assume the powers.

In every suit, the name of all the Ex^{rs} is mentioned whether one refused or not.

In Con^t it is not so, for if one joint Ex^r refuses suits are bro^t in the name of the acting Ex^r or Ex^{rs} only.

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A suit can never be brought in the name of one who refuses -
 on the other hand, the one who sues must sue the
 acting Ex^r & not bring the suit ag^t him who refuses to act -
 So where one acts as Ex^r de son tort he is liable to suit.
 1 Roll. 98. & if one who refused to act is sued he may prove the fact
 of refusal & be excused -

This right of refusing to act must be exercised before
 his co-Ex^r dies, for he can never claim it afterwards.

If the acting Ex^r (or where there is but one Ex^r) dies
 leaving an Ex^r, he is likewise Ex^r of the first Testator -
 The authority is continued down. But this Ex^r & the Ex^r
 is not obliged to be Ex^r to the first Testator & upon his
 refusal Adm^r will be granted to some one de bonis non

But if there are two Ex^rs & one dies leaving an Ex^r
 the surviving Ex^r alone has all the power.

So if one of the Ex^rs dies leaving an Ex^r & the
 other dies leaving an Ex^r the Ex^r of the last surviving
 Ex^r shall be the Ex^r of the first Testator alone & has
 the whole power -

Suppose an Ex^r dies intestate. His adm^r
 has nothing to do with the Testator's estate which is
 unsettled; for the trust was to the first Ex^r & the adm^r is
 appointed by the Court. But in such case an Adm^r is
 appointed de bonis non -

The will must always be proved before the proper
 court in England, the ecclesiastical. In U. S. before various
 Courts - as surrogates. Probate is according to the diff^t Statutes

Executor & Administrator

The mode depends on some regulations of Statute. A person appointed Ex^r begins to act as such even before the probate of the will, he can never afterwards refuse to act, because he has once taken upon himself the burden & it is not necessary that he should have gone before the Court & accepted, tho this is usual.

Devastavit

Any act or negligence of the Ex^r or Adm^r by which the assets are lost or injured subjects him to a devastavit, on which Ex^r or Adm^r goes *de bonis propriis*; as releasing debts at a discount Submitting to an arbitration, expending an unreasonably large sum for funeral charges, suffering the property of the deceased to be injured or destroyed.

God^r 66.138

An Ex^r or Adm^r is liable to the extent of the value of the personal estate of his testator. This general rule is subject to qualifications. But strictly speaking, as Ex^r he is liable for what the goods amount to when turned into money & it is enough for him when sued as Ex^r to shew that he has turned all the property into money & paid it out.

If however the creditors shew that by his own misconduct he has sold them for less than their value it will make him answerable on his bond *ad valorem*.

The question of negligence or mismanagement is to the
 6 mod 18. 181 - ^{to} say - It must generally ^{be} shown to be wilful mismanage-
 ment, & in all such cases he is answerable upon a
 devastant.

If a loss happens by any mismanagement which
 appeared judicious at the time, the Ex^r will not suffer
 2 Leon 189 for a devastant - as in case where a loss happened by the
 1 Vern. 475. Judicious Delay of selling Cotton &c.

If goods are taken from the Ex^r wrongfully &
 he neglects to sue for the purpose of recovering them
 he is liable for them.

Where the Ex^r has released a Bond gradually
 & is himself a Bankrupt, can the creditors get
 at the oblige?

The release is good as to the Ex^r But a release
 obtained by fraud, ought not to defeat the creditors
 1 Vern. 445. in Equity & I think the assets may be pursued where
 - ever they go -

The Clements writes Pay it down as
 Law & it is supported by some of the old authorities
 that an Ex^r or Adm^r should not give a bond which
 1 Bot 167 - is capable of being proved unusurious & that such
 paymen^t would be a devastant to the whole amt
 of the bond - But by two late authorities, this is contra-
 -dicted & the rule is settled in this way that the devastant
 is only of the surplus of the nominal over the equitable
 sum & legal interest - This is the reasonable rule -

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The old authorities say that suit must be brought in such case to recover of the Ex^r & then the whole can be avoided. So in the old case of a personal bond the rule used to be that after the death was forfeited the obligee could not take up with the sum in the condition, but should have the whole penalty at Law. But now Chanc^y interferes & chanc^y down the bond. & if suit were had by the Ex^r to a Court of Law, he would be compelled to receive the real sum & the lawful interest.

By the H. L. L. which was copied from the Massachusetts Statute, a Court of Law are empowered to chanc^y down Bonds - after judgement for the whole & application to chanc^y is done & paid.

If an Ex^r recovers any thing on a bond which he has sued, & adds it to the assets & then is answerable. But if an Ex^r takes a bond in such case to himself, he is liable to the whole amt & assets, whether he recovers on the bond or not. It is now his own property.

4. 11. 10 -

2. 11. 189 -

Where the property of the Test^r is taken & the Ex^r must prove & then agree to take a certain sum of the Def^t & release the action - in this case, even if he has acted judiciously yet it is open to be litigated whether the goods might not have sold for more if so he is liable & if for much more he would be liable on a devastavit -

Where an Est^{ee} takes a draft & to himself in
 case of a Bond, it is assets & he is liable to the amount
 of the bond thus given up -

Paying an inferior Debt, where H. ex^r
knows of a superior one, or where there exists a
second debt subjects the Ex^r to a Devastation.

Accident, to which all are liable with
2 brk. 297. not subject an Ex^t on a Doxstarit as where an
2 Lev. 187 Ex^t lost a bond by time & accident. The master
however pursue such a bond in Equity & will recover

all the Rep^s who act are liable to the extent of
assets which they have in - But on a devastavit, those
alone are liable who have actually committed it -
Each one is liable for his devastavit

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When an Ex^r is sued by a creditor of Testator the creditor states after summoning him to appear that the note was given him by the Testator in his life time & that neither he nor the Ex^r have ever paid it. The execution then goes out against the Testator's goods in the Lands of the Ex^r as judgement *de bonis testatoris*. Upon this the money is not p^d *scire facias* is brought against the Ex^r on the last judgement & a new execution will be granted against the Ex^r *de bonis propriis*. He can make no answer to the *scire facias* for if he had no assets he should have pleaded it in the first action. Nothing will free him from judgement except if he something done since the first judgement, previous to the awarding the *scire facias*, as payment &c.

I cannot inform you what the exact mode of proceeding is in England on a *decuratam* &c. when Ex^r is sued for such - for I could never learn - In Comyns Digest you will learn the most on this subject.

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In New Jersey they pursue nearly the Eng. method. An action is there brought in the common form, when there is a bond - plene administravit is pleaded, & then a Declaravit is the replication, upon which issue is joined & judgment is rendered. Execution then goes out *de bonis propriis*.

The most obvious & natural remedy is on the bond. Where an Inft is Ex^t to a will we have seen that an adm^r will be appointed durante minor Administration may likewise be granted when an Ex^t is absent durante absentia. An adm^r has been appointed pendente lite in a case before the ecclesiastical Court. tho this is unusual.

If the Ex^t named refuses to act or becomes lunatic or is unable to act or if none is mentioned in the will adm^r is appointed cum testamento annexo.

I have observed that anets may arise out of real property where it is devised in the will to be sold to pay debts. In such case it is a second fund. It however there are express words which shew that the testator meant that the Land should first be sold so that the personal property be secured, it will be sold. But in Court when Land is devised to pay debts it is generally the first fund.

Lect 19th Where a man directs in his will that all his debts shall be paid, it is now settled that an Ex^r's bound to pay all debts covered by the Statute of Limitations for any claim in the nature of Legacies -

Nature of Limitations is said to run on unless the presumption of Law &c. this is their object. Such a position is plausible, but on examination will be found to be incorrect. On this very proceeding under a will, now where all debts are directed to be paid shows it. If the Statute of Limitations covered certain the presumption of Law, Court would not presume that when a Testator willed that all his debts should be paid he intended that those which are barred by the Statute should be included. They would say in cases that they were not debts. Such Statute were ~~undoubtedly~~ made upon a principle of Policy to compel men to settle their debts & accounts in a limited time & thereby prevent serious litigation.

A Debt then barred by Statute is a must debt as ever it was, but without a remedy. By willing that all debts should be paid the benefit of the Statute is waived, & the Ex^r's is obliged to pay as much as when one advertises that he

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will pay all his debts such a Reclamation & constitute
to be a waiver of the Statute -

It has been a question whether an Ex^r must
pay interest on debts which carry none on the face of them.
Interest is to be paid by living
men - Now why should not an Ex^r pay likewise?

The general rule is if Debts are liquidated
whether on interest or not interest is to be paid.

The Ex^r does not stand just on the shoes of the Testator
in this particular. He is not obliged to pay until
he is called on, whereas the Testator was bound to keep

Pro. Chan^y 359. it in his drawer - But if he has actually used the
money & this can be shown, as for the purposes of law
he will be compelled to pay interest.

Upon Com. Law principles, where there
has been judgment against the Testator, & then
he dies, Execution may be taken out ag^t his
property in the hands of the Ex^r. But Statute
regulations vary the law in Eng^d & many of the
United States.

When treating of advancements I omitted
to state that nothing could be considered as such
unless given by the Father & that there must be
proof that it was designed as such - The

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nature of the gift will generally shew this. But
parol proof may be introduced sometimes to
shew it.

As to parol proof being introduced to explain
a written instrument, it is a general rule of the
Common Law that parol is not to be introduced
to alter or add to the instrument.

But this is not now to the whole extent
of it. Parol proof may be admitted to explain an
ambiguity. Ambiguities are patent & latent
a patent ambiguity is one which arises in the
construction of sentences, where there is cacoe in
sententia. Here no proof is admitted to explain it. But
this must be discovered by a view of the whole instrument
together. But where the ambiguity is latent which
happens to a foreign part, parol proof may be intro-
duced to shew what is the meaning.

As where I left a Legacy to the Female
academy of Litchfield. there was no ambiguity
on the face of the instrument but the fact
was there were two such academies in Litchfield
The ambiguity was latent & related to this

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my farm white acre this gives an estate
for life but of the words of donation are
'all my estate' if the donor had said simply
it will pass by the words of the gift -

Good proof has been introduced to
show that an instrument means a different
thing from what the words import as
where one gave the Bell Tavern here as
the donor had created an estate but as it
it was decided that the design was to give
the reversion which was all that remained
in the donor ~~~~~

Evidence

Lecture 1st

3 b. 347

Evidence, according to Blackstone, is that which demonstrates makes clear, or ascertains the truth of the very fact or point in issue, either on one side or the other.

Or, more concisely, it is any thing introduced into a court of Justice, for the purpose of ascertaining facts.

2 Swift 233.

The object of evidence is to furnish the minds of the triers with demonstration or conviction of the truth of the facts disputed & put in issue.

All Evidence is of two kinds. Written & unwritten, i.e. oral.

Some general rules applicable to all evidence follow.

Bach. Cr. 8.

1st The great cardinal rule of evidence is that the best evidence, of which the nature of the case admits, must be produced. The reason of this rule is that where evidence of an inferior kind is produced it excites a reasonable suspicion that the best evidence is improperly suppressed. Thus, a contract not required to be in writing, is in writing, or existence - & in the custody of the party who wishes to prove the fact, he cannot prove it by parol. He must produce the writing. So subscribing witnesses must be produced, tho' the deed by & saw the attestation. This rule however requires some qualification. It means the best evidence that can be obtained in the particular case - not the best which might have been written - but the best that can be obtained. Thus, tho' the rule requires the best evidence it does not require that the nature of the case admit of a written fact & does exist.

Evidence

and on receiving a letter to a document in sufficient proof
 subscribed. I have heard of a case.

The evidence must be the best of its kind, and
 sufficient to secure the purpose of the parties.

Book 4.
 Chapter 278.

It is a general rule that he who takes the affirmative to prove
 must prove it. There are two reasons for this rule. The first is that
 the negative is not in its nature capable of proof. & 2^d the party
 not obliged to prove a fact not to be true until some evidence is
 produced to show that it is true. For the denial of a proposition
 is sound as the affirmation of it. & so he must produce something
 to corroborate it. To this rule there is an exception viz—

Book 5. Chapter 6.
 148. But. ch. 298.

3 East 172.

Where a person is charged with not having done an act which
 the Law he is obliged to do. Here the party charging must prove
 the fact, the law, the negative for the Law incumbe that every one
 should or will do his duty. & it is an universal rule that one
 never comes to prove what the Law requires for him, until
 the presumption is removed. If the presumption is a presumptio juris
 de jure. It is never comes to prove at all.

Book 6.

3^d Another general rule is that the Character of a witness is
 to be questioned unless put in issue by the proceedings. The reason
 is that it is the province of the trier to determine facts and not
Character. e.g. Heir at Law brings evidence to set aside an
 will on the ground of fraud committed by the Defendant. Now the
 Defendant is not permitted to prove his own good character
 to bar by the evidence of witnesses. It is not in assumption & is
 for the trier to see if a righting person.

But. ch. 296.

Evidence

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But a third character is that of a witness who is not a party to the transaction, -
 i.e. you may investigate it, & you are a witness. If you can you may prove
 what the character of the wife was in order to estimate the damages.

In general when character is in issue general character need only
 be proved in some instances. However, particular character must be proved
 in the particular instances of misconduct, e.g. as a husband's character is
presumed fraudulent, if obliged to repay on the ground of character. He
 must prove particular acts of levity &c. So if indicted for larceny, particular
 instances must be proved.

2d. 31. 288. 4th The Evidence must be confined to the issue, i.e. to the particular
 Peake 5- fact in dispute. Because the case in question is not prejudiced by any
 2d. 159. matter foreign - also the jury ought not to be troubled with matter irrelevant.
 18a. 654

5th Hearsay evidence, as a general rule, is not admissible. It is a
 general rule that a witness should swear to facts within his knowledge.

There are two reasons for this rule. 1st The Law always requires the
 sanction of an oath. If therefore a witness be admissible to swear to
 facts related to him by another, that he hears thus &c. the rule is
 in not under oath. If the parties may have the benefit of examining & cross
 examining the witness in due time, order to observe the manner & estimate
 the truth.

Some exceptions to this rule - those facts which depend
 only on reputation may be proved by hearsay testimony as in case
 of pedigree, prescription custom &c. - when a person marries, the number
 of children - Husband & wife are admissible to prove marriage but not to
 disavow their issue for want of access. So Cursons & Lane. 11th

18a. 654. 18a. 654. 18a. 654.

Evidence

- Another exception - a fact a party has said himself in opposition to his own interest is admissible, tho' it be but hearsay. The reason is 1st it is the best possible evidence. So what is said in his presence & 2nd Atk. 1094. he does not deny is admissible. So what a man says in articulo mortis i.e. in contemplation of Death, when he considers himself dying is admissible, because the Law considers a man in this situation as likely to tell the truth as if he was under oath. as in articulo mortis. 3rd Burn. 1244. unless it is confessed it was a forgery - this goes to rebut the presumption of his hand writing.

But wives confessions or admissions are no evidence against the husband, unless the cause of action arose from a matter in which he was employed by the husband. In this case they are his as much as if he made them himself. Otherwise not admissible because it may create family discord. So if wife is not employed to make contracts for the husband yet having made them if the husband ratifies them her declarations are admissible to charge him &

- 7th J.R. 758. a wife's declarations of articles of partnership made to a third person are not evidence against him, tho' principal or master is a question. In *off* of compromise after a dispute has arisen in *off* an admission within the rule. For Lord Mansfield says "every man ought to be permitted to buy his peace" on the ground that the confessions of a party are admissible evidence it follows that those of a criminal are ever against him - yet if procured by threats or promises they are not admissible. But even here altho' the confession be no evidence, yet if in consequence of the confession

Count 249. stolen goods are found on him - evidence of the fact of such finding is admissible. of presumptions vide 12 Cas. 112. 1 R. 372. 2 R. 926. 3 R. 37. 1 B. 2. 522. La. 177.

I am now to speak of testimonial Evidence - i.e. of persons

1 What persons may give evidence, i.e. who are competent to testify -
 But 8 R. of this negatively - Those incompetent on account of infirmity, or
 293. as sometimes said, on account of inability of understanding - all persons
 who are witnesses must have such an understanding, as that they can
 122. retain in memory the events of which they have been witnesses.

For this ground Idiots & Lunatics are excluded who under
 the influence of their malady - also children - so young that they are
 incapable of any sense of truth. The distinction on this subject
 formerly taken, was that children of 14 years of age might always
 be examined, for the presumption was that they could understand
 2 the obligation of an oath - But a child of 6 years has been
 1100 excluded for want of discretion & it is laid down that there was
 no instance when one under 9 has been admitted - The rule now is

Each 2543. 1 R. 372. 2 R. 926. 3 R. 37. 1 B. 2. 522. La. 177.
 But 1 R. 372. 2 R. 926. 3 R. 37. 1 B. 2. 522. La. 177.
 243. That a child of any age, of sufficient understanding to understand
 1 R. 372. 2 R. 926. 3 R. 37. 1 B. 2. 522. La. 177.
 441. facts & to know the obligation of an oath, is admissible - It is equal
 1 R. 372. 2 R. 926. 3 R. 37. 1 B. 2. 522. La. 177.
 441. ipications are to be determined by the Court on enquiry -

Deaf & dumb persons may be admitted as witnesses, if they have
 understanding sufficient to have intelligence conveyed to them &
 may be examined by an interpreter under oath.

3 L. R. 384 - a man may so certify acts which shall prevent his alleging
 2 R. 384. certain facts as an excuse - as one who takes himself out to the
 5 L. R. 4. works as an Inn keeper, when he is not licensed, gives a soldier - proof
 cannot prove that he is an Inn keeper - To act of man's wife & of facts -

Evidence

Lecture 2

Of persons incompetent to give evidence & of course

Some are entirely incompetent & thus none can be called to the
 stand & asked to be sworn with the jury. There is considerable
 confusion in the Books, between competent & credible. A competent
 witness, however seems to be, "one who may be examined" or in other
 words an incompetent witness is "one who cannot be introduced
 as a witness" & the question whether competent or not is a
 question of Law, to be determined by the Court. But an

incredible witness is one to whom the jury may be examined but whose
 114. note Character for truth & veracity is to be determined by the jury.

under all the circumstances. The question then of competency
 is a question of Law for the Court; & that of credibility is a
 question of Fact to be determined by the jury.

114. 414. Thus therefore a statute speaks of the credibility of witnesses.
 It means that it shall be determined by a jury, under all
 the circumstances, of the case -

Of the infancy which detracts from credibility, -
 Much has been said upon this general character. Two
 things are necessary in England, to destroy or weaken the
 125. credibility of a witness introduced into court by showing him
 4. to be infamous. 1st The witness who introduces him must swear
 692 - that his general character for veracity is such as understood
 by common report, ^{is} inferior to that of a man in a
 general way.

Book 125
 4. State Trials
 692 -
 Cal. 12. 229.

Evidence

XXI

2^d Comment such also that, ^Quain his knowledge of such his
general character, he would not believe him untruthful.
Case 11

In Commonwealth, the witness Francis Perloff has
been to enquire into the general character for truth & veracity.
But of late years the English practice has been admitted.

It is now held that the evidence to be received in order
to impeach the credibility of a witness on the ground of
infamy, must be applicable to his general character only.

It is also held that his common repute for particular acts
of misconduct are not to be enquired into. Hence the
witness is not supposed to be prepared to answer particular
acts of misconduct suddenly brought up in Court. But
he is always supposed able to prove his general conduct good.

When a witness is impeached the party who wishes to impeach
him may call on the other to prove why the character
of the witness is not equal to that of other men for truth &c.
because some may have numerous opinions for what is
not 'infamy'.

So also the credibility of witnesses may be weakened
from his having told the facts differently, and of
Court from what he relates in Court. as of concerning legitimacy,
out of Court says it is legitimate, in Court that it is illegitimate.

The privilege of attacking the character of witnesses
by proving them to be false is confined to the party against
whom he is called, for the party introducing him cannot
thus impeach his character. This for two reasons -

Peak.

125-7-

Evidence -

facts of offences, he might always introduce witnesses for the very purpose of proving their character infamous. It would be placing it in the power of the party if the evidence was in his favour, to have his general character stand good, if against him to impeach it. But this some might as well repose in any body, for the Jury ought to know if the witness is credible, so as to ascertain the truth of the facts in issue.

If however the witness gives evidence against the party who called him, he may impeach his testimony as to the facts related, i.e. he may introduce other witnesses to shew that the facts as related by him are not correctly related.

Secondly; of the infamy which renders witness entirely inadmissible. To do this he must have been guilty of the Crime falsi, this points directly to that the character of a man for integrity: & includes any crime that bears the stamp of fraud, or from which fraud is inseparable as forgery, perjury, theft, conspiracy, attempt for false verdict, treason (the qu.) & Perjury.

According to the modern rule, the offence & not the punishment is regarded - thus formerly - for if a man was sentenced to stand in the pillory for any offence he was guilty of the Crime falsi.

3 Lev. 476.

Tolke
1272 Wils -
18 -

Talk. 687

- 690 -

Evidence

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But the rule now is that a man sentenced to death for murder, not punishable by penal law, is not guilty of the crime felony.

Formerly the rule was that a man who was sentenced to death for murder, not punishable by penal law, is not guilty of the crime felony.
2 Wils. 282. To render the witness incompetent on the ground of infamy, he must have been convicted & to show this a copy of the record must be produced. This rule that a copy should be

produced was introduced at a time when it was well settled that a witness cannot be asked a question tending to criminate himself - a copy was the best evidence.
3 Lev. 426. Co. Litt. 689. Lathe 689.

But the modern rule says that questions tending to criminate the witness may be asked provided it does not subject him to punishment, & it is now settled that witness may be questioned as to his having been convicted of & punished for the crime felony.

1 Ed. 51. Hence this becomes the best evidence, the nature of the case.

4 T. R. 446. admits it is the confession of the party & better than a record.

great con. a copy always may be introduced as proof, & the witness be questioned as to the conviction likewise the not as to the crime felony having been committed by him; & the rule of producing the copy applies only where the witness cannot be questioned himself concerning the fact.

This incompetency on the ground of infamy may be removed sometimes by pardon & sometimes only by the reversal of the judgement.

Evidence -

Wherever the incompetency arising from the infamy is a part of the punishment for the offence it can be removed only by a reversal of the judgement e.g. By a statute every person prosecuted under it, for perjury & convicted, shall be deemed incompetent to testify in a court of justice - A pardon in this case will not remove the incompetency - The object of the statute is to prevent perjury - But if the incompetency be not a part of the punishment, a pardon restores the competency.

Com Dig. titl.
Festivity. c. 1.

sec. 115.

A 380 -

Pardons are of two kinds - either by the King or by the Statute - Thus from the King's order to restore the competency - the pardon must be produced -

A Statute pardon takes place, where a clergyable offender prays the benefit of Clergy & is allowed it - This allowance is a pardon - & restores the competency.

Now for pardons apply in the U.S. States is not well ascertained - in Connecticut a pardon does not restore the competency - but the person who has been convicted of the Crime Public, afterwards returning to the steady habits of Connecticut is then admissible - for his latter conduct revives his forfeited reputation -

Evidence

In England, Quakers are admitted on their affirmation only in civil cases - & this is on the pain & penalty of perjury - They are not admitted in criminal cases - In qui tam actions they are admitted on their affirmation for these are purely civil - So too in England the affirmation of a Quaker in criminal cases is admitted, in order to exculpate himself.

In the United States, the affirmation of a Quaker is admissible in all cases - civil & criminal.

4th of persons incompetent by reason of their interest in the case -

This is a general rule now established that all persons who are interested in the event of a suit, are excluded. And this interest may be either direct or

17 N. 300. Consequential - Where he is to be immediately benefited or injured by the event of a suit, he is said to be directly interested - e.g. if he is a party, or has made himself liable for the contr. So when the judgment or verdict obtained in the cause to which he is called to testify, may be used for or against him, in another suit to which he is a party, he is said to be consequently interested in the event - By this is meant, if the conclusive evidence of any thing which will arise in that cause for or against him, either as a rule of damage or will benefit him or

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This is the only interest in England which excludes in civil cases. By the verdict or judgment being used for or against him is meant, that if it may be used

3. T.R. as evidence of a fact a fact which will certainly subject him or when he is benefitted by subjecting third persons to account of the verdict or judgment being used for or against him as a rule of damages. He is consequently interested in the particular it differs from an interest in the question - for

Lecture 3^d As the Law now stands an interest in the

3. T.R. 27. ^{Question} ~~Does~~ does not exclude in civil cases. By an interest in the ^{question} ~~fact~~ is meant, when by possibility the witness may

be liable to an action in a certain event or the gaining in a similar situation with the party for whom he

145. ^{intercourse R.} 247. ^{Lord} 144. called - the decision in the case may influence the minds of the jury - this interest goes to the credibility

of the witness: ex. gr. A is prosecuted for breach of the peace by reason of an assault & battery on B. B is a competent witness to prove the battery - it is not properly called an interest in the suit, but an influence prejudice & goes only to his credibility -

The interest which excludes must not only be direct or consequential, but must be pecuniary; i.e. some loss or gain on the score of property; for it is well settled that the interest which arises from establishing a higher character

As B is innocent & does not give any consideration, he is not interested in the question of the judgment from the evidence used - interest in the question of the judgment from the evidence used - interest in the question of the judgment from the evidence used -

Evidence

or occupying from a charge of misconduct or neglect.
 The witness is competent

The same rules which have been mentioned respecting
 civil cases, apply to criminal cases generally - For the
 rule now settled is that the question in a civil prosecution
 being the same as in a criminal or penal one, the intent
 goes generally to the credit, unless the witness is immisicably
 to gain or to lose by the event of the suit, or unless as
 before stated the prosecutor or witness can be given in
 evidence in a cause wherein he is interested - Before the

Peake 116 Ast. case of Abrams & Brown the cases were contradictory
 Hard' 331. 1 Salt 288. 2 H 1104. 1 Wm 49. 1 Sid 431. 1 H 595. 2 Do 1299.

But the elementary writers tell us of three cases
 of a criminal nature, in which an intent in the question
 merely excluded those were rising, forging & forging.
 As to Usury. The borrower of money on an usurious
 loan, was not a competent witness to prove the
 usury or an information against the lender.

But even here there was great probability, that
 the witness was interested in the event of the suit.
 For it is said both by Lord Hardwicke & Lord Mansfield,
 that it was the practice of the Court always to
 discontinue an usurious contract, that is when the party
 informed against was convicted, the Court took
 the instrument & destroyed it. If the instrument

was not destroyed, his interest was in question.

As to Perjury - The witness was certainly interested in the event of the suit, because that witness who is convicted a man of perjury was entitled to £10 - it was his interest to convict him in order to get the reward -

As the Law now is he is competent in cases of Perjury & money, if he is not interested in the event of the suit - But in case of forgery, by a long adherence to decisions it is now Law, that a person whose name is forged to an instrument is not a competent witness on an indictment for the forgery -

289 - Yet it is very clear that the person whose name is forged has only an interest in the question. The Reason for this is *ita lex scripta est* - it is an exception to the rule that persons of the nature of interest shall exclude.

We are now to consider the character of the persons who are excluded & who are interested -

289 - In general a party to a suit is not a witness for he is in the highest degree interested - a party is never excluded because he is a party, but because he is interested. Hence it is that tho the party is only a trustee, having no beneficial interest whatever, yet if he is a party on the record, his interest excludes him: for he is personally liable for the costs in the first instance, & the chance of

indemnity from the ceding que trust cannot remove
 1200 149 his certain liability - a certain interest is never removed
 5 East 7- by a possibility that this interest may not possibly exist.

on the ground that a party is never excluded
 because he is a party, it is well settled, that if the
 party is not at all interested in the point of fact
 1200 153 he is admissible - ex. gr. Judge of Probate, tho a
 party, & the second is an admissible witness, for
 he is not at all interested in point of fact.

1200 441. So too if a material witness for the Plaintiff
 1200 409. is made Defendant by mistake, ^{or he becomes his adversary} the Court will
 1200 285 order his name to be struck out, even after issue
 1200 54. is closed, if no evidence appears against him. if slight evidence they will order him to be tried first.

1200 351. So too Corporations are sometimes admissible
 2 Lev 241. when they have no private interest & sometimes in
 2 How 97. 1200 192 when they have a private interest.
 5 R. 174. 2200 Case of necessity when they have a private interest.
 1153 or 1253. 2 Fa 1069. Doug. 360. 1 Wils 332 4 TR 2017. 6 do 154. 2 East 559.

So the rule that interest excludes witnesses, there
 1200 158. 151 note. are some exceptions - These exceptions generally
 2 Keil 685. - arise from the necessity of the case i.e. from
 Bull. N.P. 197. the absolute impossibilities of procuring other
 289. - testimony. In an action on the Statute of Hinton
 called fine day the party robbed is a witness against
 the landlord always as to the fact, that he was robbed.

Evidence

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This has been formerly doubted. From this case we derive this principle, That in all cases where a Statute is made giving a right to recover of any person or persons upon the happening of a particular event, if from the nature of the case the event cannot be proved without the party benefited be introduced, he may be introduced, & is a good witness. The reason is, that if he were not, to be introduced, the whole object of the Statute would be defeated.

11th 92. 6 mod. 216. So again on the principle of necessity, it is holden that persons who become interested in the common course of business & who alone have knowledge of the fact, are competent of the fact. — See 151. 164. Bull. V. P. 280. Peake A. P. 129. 3 Wils. 40. Ex. 91. a servant who is usually entrusted to pay money, or deliver goods, is competent to testify as to the payment & delivery. 2 Lev. 271. — 9 Thom. 47. 2 H. Bl. 590. 4 East. 180. to testify as to the payment & delivery.

He 315. But he is not a competent witness for a penalty, as a common informer is not a competent witness to prove the offence by which the Defect has incurred the penalty. Gilb. L. & E. 132 & contra.

Comp. 199. It has been decided by Lord Kenyon at Nisi prius that where the witness has no absolute right to the penalty, vested in him by the commission of the act by the Defect, it is admissible as in all those cases where the Court may inflict a punishment or not, at their election, viz. a pecuniary penalty. 3 East 581 contra.

A contingent interest never excludes.

Evidence

Case; on the ground of necessity - a Plaintiff who
 sues in his life in Chancery, that he has no other proof
 may call upon the Def^t to answer on his conscience
 to questions that may be put to him. This is subject to all
 the former restrictions. In connection the Courts
 have decided that in an action under the Statute for
 stealing goods, called an action of theft, the party
 from whom they are stolen, may swear to the fact
 that the theft was committed; ^{but not the value} So also in an action
 for a secret assault & battery, the party injured is
 competent to prove the fact of battery for he only
 can prove it; if others saw it, it is no secret battery.

So also in action on a book case, both parties
 are competent to swear to their own account.

In connection likewise, in a writ of forcible attach-
 ment the party sued with a scire facias i.e. the garnishee
 is competent to swear whether he has any property
 or not in his hands of the principals.

Park 132
 Gell v. D. 134
 1 Str 663 -
 2 Cr. 11. P.
 552 -

Sometimes, in such persons interested are admitted
 not on the ground of necessity for a person is often
 made Defendant on purpose to exclude his testimony
 Here then the rule is, if no evidence a witness is adduced
 against him, he is entitled to a verdict of acquittal
 immediately upon the Pl^t's closing his case, & may then
 be admitted as a witness against the others.

Evidence

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Gill. 60 139. *But* of this is any evidence against him however slight he is not entitled immediately to a verdict of acquittal, & that he may be examined for the other. The question as to his liability, must wait the final event of the verdict. The jury are the only men who can determine his liability. In such case where the evidence is slight & inconclusive, in Co. de Off. Peake 153, may, on motion to the court insist that he be tried first & on the determination of such suit he is competent to testify in defendants favour.

So also is one Defendant a competent witness for the other. By default he is a competent witness for the others. So too in an action of account, the Off. is a witness before the arbitrators. So where rewards are offered for apprehending felons, the party apprehending is competent to prove the fact of necessity &c.

Peake 152nd 2. And in all cases of tort &c. one or any number may be left out of the declaration to have their testimony - the objection arising from this situation goes to their credit not to their competency. for Peake 152nd 2. no contribution allowed among tortfeasors.

Sect. 4th. An interested witness in the event of a suit is admissible when his interest is counteracted by an equal or stronger interest to the contrary. - he may be said to have no interest at all so that the balancing interests will make him neutral. On this ground it is that on an indictment information for robbery & bridge

West 351. 6 mod. against - County, the inhabitants of that County -
 307. Gilb. ex. 124. competent witnesses - So - Corrupt a town -

On the same principle it has been decided in Eng.
 that in an action against the drawer of a bill of exchange
 by the holder the acceptor who has refused payment
 is competent to prove that he had no effects of the
 drawer in his hands - for the purpose of doing away
 the necessity of notice - here his interest is
 counterbalanced each way.

The reason of excluding interested witnesses is
 that they having a strong bias on their minds
 might not to be just in a situation where their
 interest may induce them to deviate from the
 truth. of course where the reason ceases, the law
 also should cease - ex parte ratione cessat etiam
ipso jure is the maxim. Hence it has often
 been decided that a mere trustee who has no
 beneficial interest is not a party on record
 or if on record, yet not a party in point of fact.
 any way interested, is a competent witness - This
 is the case with a grantee in a Deed - executor
 & devisee who have only a legal title - yet if they
 are on record & liable for costs, or otherwise interested
 in the event they are not to be excluded

In voluntary conveyances - the grantee is a witness -

2 Atk. 1026.

1847 290 -

Long 134.

Gilb. ex. 123.

Peake 156

1 Bl. R. 365.

It is a question whether a person having an interest arising from a contract, can be a witness as to any matter relating to that contract. *ex. gr.* A & B have a controversy about land, & before the trial commences 1 Mod. 21. A tells C that if he, A, recovers, C shall have one half of the land. C says he will be a witness. 681. The rule on this subject is, that if the promise or agreement between A & B can be enforced, or if B upon a *voir dire* will affirm that he believes a writ abide by his promise, C is then incompetent. The reason of this rule is, that the witness is consequentially interested in the event of the suit.

But if the person is not bound either in Law or in Equity to fulfil his engagement, yet if the witness thinks he will in Honour perform it, he is excluded - for it is a well settled rule that the witness 1 Str. 129. who is under an honorary engagement to make good his word, & who is not repaid by the event of the suit, though he is not legally bound, yet he is incompetent. *ex. gr.*

A at the instigation of B, & at his request, commits a trespass on C. A is sued by C & B is called as a witness. Upon the *voir dire* declares that he is bound in Honour that if A fails, to pay one half of the expenses. He is excluded.

This interest in the event of a suit must exist at the time when the fact which the witness is to prove, happens or he throws upon him afterwards by operation of Law or the act of the Party requiring his testimony, in order to exclude him.

Evidence

ex. gr. ^{the} ~~man~~ ^{man} ~~and~~ ^{and} at the time when the deed took place
happened, & if in fact he is true, they give a note to
the partnership is dissolved or action is brought on the
note against both of them by C. now if there be nothing more
in the case, neither of them are witnesses to prove the note
usurious - because the interest existed at the time.

Shown on him by operation of law. He will settle in Eng.
that the deed is void during the life of the ancestor is a
competent witness to prove anything respecting lands to which
he has this life's apparent - on the death of the ancestor the
Lands descend to him, now he is incompetent to testify
to any fact respecting the lands previous to their descent,
if there be nothing more in the case. "by act of the party
who requires the testimony" as, a man makes an usurious note

Prin 586

1st. 652

Prin 197.8

3d. 27

May 134 notes

to B & C is giving to the usury - afterwards B assigns half
the note to C. & then sues A on the note. C is now an
incompetent witness to prove the note ~~not~~ to be usurious.

Therefore it is now settled rule, that if the witness
becomes interested by his own act, without the
interference or consent of the party who calls for his
testimony, such subsequent interest will not render
incompetent; otherwise it would be in the power of
the adverse party or the witness to deprive the party of his
testimony & thus the ends of justice be defeated - ex. gr.
a witness to a contract lays a wager with a third person
that the party benefited by the contract will not recover
here he is not incompetent the directly interested is the
event of the suit.

Evidence

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His interest & the interest must continue until the time of the trial; for however great his interest might have been at any particular time before the trial, still if it does not exist at this time when 37th. 27 - he is called to testify, no objection can be made to him on the ground of interest. From this it follows, as a general rule, that if an interested witness is released, i.e. if his interest is destroyed, his competency is restored - For the same ground of a witness who is interested refuses to accept a release, a tender of one by the party wishing his testimony answers all the purposes of a release accepted. Because a witness by his own willful act of all not deprive a party of the testimony which he can give. Hence has arisen a very interesting question respecting the admission of interested witnesses. You have much agitated the English Courts the question is, whether a devisee (or a creditor where the land is charged with debts) who is a witness to a will can prove it by releasing his interest. It was much contended that without a release he could prove it, for he is interested. But can he prove it after a release? It was first decided by Chief Justice Lee & the three judges present that a creditor where lands are charged with the payment of the debts was not a competent witness to prove the will after a release of his interest. This decision gave great alarm & to prevent any further difficulty the Statute 25 Geo. 2 was enacted which declared that every devise or legacy made to a devisee,

settled by Statute
that he is to be
admitted in witness
that he is a creditor
of the testator, that is
he has an interest
in the land devised
being charged with the
payment of the
debts of one of the
testator - the
witness is competent

Barr 417.

See & 19 Kearsy

Hargens Essay

See Rev.

witness to a will should be said & of course the witness
 be admitted: & that every creditor whose land was charged
 with the payment of Debts was competent to prove the
 will notwithstanding his interest. Afterwards a case
 arose which was supposed not to be within the Statute
 & Lord Mansfield decided with two other of the judges
 that the non credibility of the witness could be purged
 by a release — afterwards another case arose before
 the Court of Common Pleas & there Lord Camden, in
 an elaborate argument, differed from Lord Mansfield
 & held that the non credibility of the witness could
 not be purged by a release — but the three Justice
 judges agreed with Lord Mansfield, & it now remains
 undecided, with six judges against six — & in Consult.
 the Superior Court decides that the Law was correctly
 laid down by Lord Mansfield & the Court of Errors
 reversed the decision — Perhaps the true point of
 light in which this subject should be viewed is this —
 The principle laid down by Lord Camden the denial by
 Lord Mansfield, is a correct one, viz. that if the witnesses
 to a will are non credible at the time of attestation
 no subsequent release can purge the non credibility
 This principle is founded on the strongest reason — a
 witness to a will is required by Statute of Frauds &c
 28 Car 2 for two purposes 1st To judge of the sanity
 of the Testator, that he might not be subjected to fraud
 & deception 2^d to assume the corporal act of signing & sealing.

The only time when he was competent of these two facts, was that when the instrument was executed; the object of the Statute then being to leave the witnesses ascertain these two facts, & the only time when he could do it being at the time of the execution, it follows, consequently, that if he then was incapable or non credible to ascertain them, he must forever remain so - Consequently, if a Devisee who is a witness to a will was non credible at the time of attestation, that must forever remain, i.e. that non credibility can never be reversed - The question is this, "was the devisee at the time of attestation non credible?"

He was not non credible, because non credibility, or non competency arises from the interest which he has as devisee under the will - but his interest was a contingent interest, the devisee under a will before the death of the testator. The time of attestation is a mere expectation - That this interest is contingent appears from this, that no will is consummated until the death of the testator, for before this event he may revoke all claims, and the will of all or any their interest - Whether the Devisee will have any interest or not depends on this, whether or not the testator will make a new will & disposition & so defer this expectation - But all expectants are competent witnesses, as is the case with all presumptive heirs - then then being true that a mere expectant is a competent witness & that a devisee is an expectant at the time of attestation, he at that time was competent to judge of the signing & sealing of the testator. At the death of the testator his interest was vested & then he became incompetent, the reason of his interest, but this like all other interests may be released & he is competent -

Lecture 5th To the rule that all interest may be released.
 There is an exception here, where a man conveys Land, with
 a warranty, which warranty runs with the Land; here the
 7 Book 685. Liability of the grantor on the covenant of warranty to any
 subsequent grantee, can never be released, because it
 runs with the Land. But a mere sale of land without
 1 H. 445. warranty does not prevent a release from operating, to
 discharge the interest both at Law & Equity. & Engd. b.

But it would seem as tho even a release of Li-
 ability on the covenant in this case would not discharge
 the interest. You are now well settled that an action
 of assumpsit will lie to recover the consideration money
 on the ground that the consideration has entirely
 failed. The rule was established when no action
 would lie. But now he clearly has an interest
 distinct from that arising on his covenants, viz,
 that if he has no title he is liable to refund the
 consideration money.

Where two or more persons jointly bound
 on a several contract, & one is sued a release to
 one discharges his interest, & renders him ^{witness} competent.
 The objection goes to his credit only. For the other
 cases vide 4 M. 303. 5 Tan 278. Cas Hardw 202
 1 Str. 506. 2 do 1026 1 LR. 163. Peake N.P. 174

Some isolated cases: where the witness the interest is admitted;
 as if a Thief is guilty of a voluntary escape the escapee is
 124- a competent witness in an action brought against the Thief
 by the party injured, yet he is interested in the event of the suit
 67- for he is liable to the creditor of the thief if found not guilty
 3 Fall probably admitted on the ground of necessity -

as the same point, a party removed is competent witness
 6 made 244 in an action brought by the party injured against the accused
 184 tho he too is liable to the creditor if removed and found not guilty

of persons incompetent by reason of their relation
 to the parties - There are but few rules under

this head, for as a general rule, relationship creates only
 a bias, & that bias never excludes -

The first relation that excludes is husband & wife -

As a general rule they are not competent witnesses for

each other, one reason is, that a party
 186- generally is not a witness. & the Law having united the

husband & wife in interest when one is sued if the other
 264 were a witness the party would virtually be allowed to

testify - This however is not the true or only reason -

because generally the husband & wife are admitted even
 265- 266- 267- 268- 269- 270- 271- 272- 273- 274- 275- 276- 277- 278- 279- 280- 281- 282- 283- 284- 285- 286- 287- 288- 289- 290- 291- 292- 293- 294- 295- 296- 297- 298- 299- 300- 301- 302- 303- 304- 305- 306- 307- 308- 309- 310- 311- 312- 313- 314- 315- 316- 317- 318- 319- 320- 321- 322- 323- 324- 325- 326- 327- 328- 329- 330- 331- 332- 333- 334- 335- 336- 337- 338- 339- 340- 341- 342- 343- 344- 345- 346- 347- 348- 349- 350- 351- 352- 353- 354- 355- 356- 357- 358- 359- 360- 361- 362- 363- 364- 365- 366- 367- 368- 369- 370- 371- 372- 373- 374- 375- 376- 377- 378- 379- 380- 381- 382- 383- 384- 385- 386- 387- 388- 389- 390- 391- 392- 393- 394- 395- 396- 397- 398- 399- 400- 401- 402- 403- 404- 405- 406- 407- 408- 409- 410- 411- 412- 413- 414- 415- 416- 417- 418- 419- 420- 421- 422- 423- 424- 425- 426- 427- 428- 429- 430- 431- 432- 433- 434- 435- 436- 437- 438- 439- 440- 441- 442- 443- 444- 445- 446- 447- 448- 449- 450- 451- 452- 453- 454- 455- 456- 457- 458- 459- 460- 461- 462- 463- 464- 465- 466- 467- 468- 469- 470- 471- 472- 473- 474- 475- 476- 477- 478- 479- 480- 481- 482- 483- 484- 485- 486- 487- 488- 489- 490- 491- 492- 493- 494- 495- 496- 497- 498- 499- 500- 501- 502- 503- 504- 505- 506- 507- 508- 509- 510- 511- 512- 513- 514- 515- 516- 517- 518- 519- 520- 521- 522- 523- 524- 525- 526- 527- 528- 529- 530- 531- 532- 533- 534- 535- 536- 537- 538- 539- 540- 541- 542- 543- 544- 545- 546- 547- 548- 549- 550- 551- 552- 553- 554- 555- 556- 557- 558- 559- 560- 561- 562- 563- 564- 565- 566- 567- 568- 569- 570- 571- 572- 573- 574- 575- 576- 577- 578- 579- 580- 581- 582- 583- 584- 585- 586- 587- 588- 589- 590- 591- 592- 593- 594- 595- 596- 597- 598- 599- 600- 601- 602- 603- 604- 605- 606- 607- 608- 609- 610- 611- 612- 613- 614- 615- 616- 617- 618- 619- 620- 621- 622- 623- 624- 625- 626- 627- 628- 629- 630- 631- 632- 633- 634- 635- 636- 637- 638- 639- 640- 641- 642- 643- 644- 645- 646- 647- 648- 649- 650- 651- 652- 653- 654- 655- 656- 657- 658- 659- 660- 661- 662- 663- 664- 665- 666- 667- 668- 669- 670- 671- 672- 673- 674- 675- 676- 677- 678- 679- 680- 681- 682- 683- 684- 685- 686- 687- 688- 689- 690- 691- 692- 693- 694- 695- 696- 697- 698- 699- 700- 701- 702- 703- 704- 705- 706- 707- 708- 709- 710- 711- 712- 713- 714- 715- 716- 717- 718- 719- 720- 721- 722- 723- 724- 725- 726- 727- 728- 729- 730- 731- 732- 733- 734- 735- 736- 737- 738- 739- 740- 741- 742- 743- 744- 745- 746- 747- 748- 749- 750- 751- 752- 753- 754- 755- 756- 757- 758- 759- 760- 761- 762- 763- 764- 765- 766- 767- 768- 769- 770- 771- 772- 773- 774- 775- 776- 777- 778- 779- 780- 781- 782- 783- 784- 785- 786- 787- 788- 789- 790- 791- 792- 793- 794- 795- 796- 797- 798- 799- 800- 801- 802- 803- 804- 805- 806- 807- 808- 809- 810- 811- 812- 813- 814- 815- 816- 817- 818- 819- 820- 821- 822- 823- 824- 825- 826- 827- 828- 829- 830- 831- 832- 833- 834- 835- 836- 837- 838- 839- 840- 841- 842- 843- 844- 845- 846- 847- 848- 849- 850- 851- 852- 853- 854- 855- 856- 857- 858- 859- 860- 861- 862- 863- 864- 865- 866- 867- 868- 869- 870- 871- 872- 873- 874- 875- 876- 877- 878- 879- 880- 881- 882- 883- 884- 885- 886- 887- 888- 889- 890- 891- 892- 893- 894- 895- 896- 897- 898- 899- 900- 901- 902- 903- 904- 905- 906- 907- 908- 909- 910- 911- 912- 913- 914- 915- 916- 917- 918- 919- 920- 921- 922- 923- 924- 925- 926- 927- 928- 929- 930- 931- 932- 933- 934- 935- 936- 937- 938- 939- 940- 941- 942- 943- 944- 945- 946- 947- 948- 949- 950- 951- 952- 953- 954- 955- 956- 957- 958- 959- 960- 961- 962- 963- 964- 965- 966- 967- 968- 969- 970- 971- 972- 973- 974- 975- 976- 977- 978- 979- 980- 981- 982- 983- 984- 985- 986- 987- 988- 989- 990- 991- 992- 993- 994- 995- 996- 997- 998- 999- 1000

of this is the interest of the Law to preserve domestic tranquility
 & prevent family discord -

wife after divorce can disclose confidential
 matters told her by husband

Evidence

So if two persons are jointly indicted for a breach of the peace in a violent & bloody, the wife can testify to clear him

So this rule there are some exceptions - as in the case of treason they are witnesses for or against each other; but laid down in all the elementary writers, & the reason given is that the allegiance due to the crown is paramount to all private obligations - so domestic tranquillity is overlooked in the preservation & security of the crown - This matter seems to be questionable on principle -

Again, in a public prosecution for personal abuse from the husband to the wife, she is a witness.

from the necessity of the case - So so in Dyer's case just decided in this Court - So each may swear the

force of each other, for danger apprehended or fear

28th - - and abuse rec^d - So audrey's case must be law - by verdict ^{in such cases}

The wife, to be excluded on the ground of relation - she must be a wife de jure & not merely de facto for in the latter case she is competent -

So, if divorced a vinculo se, the wife is competent to prove any fact subsequent to the divorce; but not any facts during cohabitation is lately decided in the case of Morse vs. Linnisterton 43 Geo 3

1793

1 Brown 47

2 Keble 403

1 Hal. P.C. 36

1 M. p. 265

269. Peck 1st 103

115. 5th

603 -

Buck. N. 5

28th -

Peck 1st 4th note.

Evidence

123-

1st 504 In an action brought by a woman as co-sole, the husband is
2 J.R. not a competent witness to prove that she is his wife. —
265.4 de. —

1st 504. But in an action against a daughter's husband for
goods sold, her mother is a competent witness to prove that
the goods were delivered on the credit of the husband, i.e.
the mother's husband. tho' this is charging witnesses husband
collectively —

Relation of Counsel

An advocate or counsellor at Law is not permitted to
testify, even tho' he wishes it, to facts related to him
Professionally during, or in contemplation of a case.
265.4 de. And the same rule applies to an interpreter who
relates facts for a Foreigner — The reason of
this rule is obvious — It is necessary that the counsel
should have a knowledge of the facts in the case, tho'
he may manage it properly — & a party never wants
to state them if the counsel might be compelled to disclose them.

But when the facts are not related in profes-
sional confidence, ^{and it may on the whole, be after a compromise by way of mitigation} he is competent as to all to any
other person: for then he stands on the same ground with
any friend to whom the facts are related, & however great
the confidence reposed may be if distinct from professional
confidence, the obligations of friendship shall not render
him incompetent. This rule does not extend to answers
made by a witness to interrogatories put by the counsel
in the hearing of a case: for it seems well settled

Evidence -

that when an Attorney in a cause interrogates a witness
 & the same witness in another cause, gives different
 answers to the same interrogatories, the Attorney may

destroy the witness's testimony by proving his
 former testimony - This rule extends only to a Legal
 Practitioner - It does not apply in cases where he may be
 enabled to connect the cause - therefore a relation made
 to a Physician &c. does not render them inconsistent
 to testify to the relation

Under this head we may consider a new rule of
 evidence, introduced by Lord Mansfield, & now down to

1 S.R. 246 - evidence, introduced by Lord Mansfield, & now down to
 3 S.R. 271 ^{as stated in the Law of England} ^{& 4 S.R. 1000 Federal Opinion} not settled in Connecticut - viz,
 601. That a person who had given currency to an instrument
 by signing his name to it, altho released from his interest
 should be estopped from impeaching it. It should be
 understood inconsistent to disprove its genuineness -

The reason of this rule is that otherwise two or more
 persons might combine to cheat & defraud mankind -
 The rule is opposed to analogy, for it is well settled that
 the subscribing witnesses to a will are competent to prove
 the insanity of the testator.

Persons also may be estopped from testifying, by
 their own act - On this ground parents are not permitted
 to prove they had no connection in order to bastardize their issue.

Evidence

Is also the rule does not apply when the writing is in the hands of the opposite party, & he will not produce it. For to exclude parol testimony, the writing must be in the hands of the party who claims advantage from it. Such as in the last case the contents of the writing may be proved & the better opinion is that you may prove the parol contract which preceded the written one not on the ground that it is the best evidence, but that it is precisely like the written one.

The rule with its qualifications then is, if a contract not required to be writing, is written & in existence & also in the hands of the party claiming under it, parol proof of its contents is not admissible.

In Chancery if a parol contract is reduced to writing & by mistake is different from what was intended by the parties, parol testimony that it was a mistake, is admissible, but at Law there is no remedy.

So also those contracts which are required to be in writing by Law - parol testimony is inadmissible. This rule includes all those contracts required to be in writing by the Statute of frauds 29 Car 2. The contracts required by Law to be in writing are by Statute. There is only one instance where at common Law a contract must necessarily be in writing to be of validity viz. an indenture of apprenticeship, & even this is supposed by some to be by an ancient Statute.

Here also if the contract is lost or in the hands of the opposite party & he will not produce it, the other party may prove its contents by parol.

In both these classes of cases, the Plaintiff need not set forth in his declaration that the contract was in writing & the declaration is not demurrable on that account.

The rule of law is, that where a contract requires by statute to be in writing, but which is good at Common Law by parol, the Plf need not aver that the contract is in writing for the statute only furnishes a new rule of evidence & not of pleading. But where a contract is by Common Law required to be in writing in an action on the contract, Plf must aver in his declaration that it is in writing - ex gr. on the nature of apprenticeship -

But sometimes the Law requires the contract to be in writing, but a writing of a certain description & no express which must always be under seal & seal. If then a deed has not these formalities, it is as objectionable as parol testimony. But if a contract to convey land is in writing & not attested with these legal solemnities, tho it will not operate at Law to pass title yet in equity it will operate to compel a conveyance of the title. This consideration is an executory agreement.

Another class of cases in which parol testimony is excluded on the ground that the subject matter is incapable of such proof.

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is a parol testimony is offered to explain a written contract. For this a general rule that parol testimony is not admissible to explain, i.e. to enlarge, diminish or contradict a written agreement.

This last rule however applies only to the substantial parts of an agreement & not to the accessories. These accessories are signing, sealing, delivery & consideration. To these the rule does not apply; each of these may be proved to have been or not to have been executed, except that the instrument in a due cannot be introduced into the case. Here proof may be admitted that the consideration is different from that recited to be.

To this rule there are exceptions. If there is an ambiguity, that may be explained by parol. But there the distinction between a patent & a latent ambiguity. The former is one which arises from an inspection of the instrument itself, i.e. the meaning cannot be determined from the words used. The latter is one, where on the face of the instrument every thing is as it should be, but the ambiguity arises from something dehors the instrument i.e. from some fact collateral to & independent of the instrument. The rule in such cases is, if the ambiguity is a latent one, it may be explained by parol, a patent one cannot be so explained.

1st Ex. A latent ambiguity, a devise to "my son John" & the testator had two sons of that name. Here parol is admissible, to show which was meant.

1 M. R.
1249-
8 L.R. 379.

And the reason is that in these cases it stands well with a well to show the intention of the Testator. Hence it is that in case of a latent ambiguity, parol testimony is not admitted to contradict the will. It does not stand well with the instrument.

Parol testimony is often admitted to give some effect to an instrument, which otherwise would have none in case of latent ambiguity; as in the case of a note of hand to B without mentioning any consideration; now if there was none the note is of no validity, & yet an action is to be brought on it of consideration. Here a man may prove by parol that there was consideration.

Lecture 6th
(1 M. R. 16.
Parker 146.
Doe 82.

This would make the latent ambiguity explainable by parol. (And the reason is, because it would in effect make that pass by parol, which the Law says shall not.) This rule is universally true as it applies to the construction of documents. But it is not true when applied to words of an equivocal import. Here, parol testimony is admissible to show the intention of the parties. e.g. In ancient times deities were unio person sometimes meant male & sometimes female, & so was equivocal.

So too on the same principle the word estate was equivocal. Formerly it meant all or part of an estate & parol was admitted to show which & how much.

So likewise where a person uses a legal term, which if understood in the legal sense would render a devise or grant absurd or ridiculous, parol testimony is admissible to show the intention. e.g. case of the Pelle Leucon.

1 M. R.
The case of Pelle Leucon.

Evidence

So also a patent ambiguity cannot be explained by parol testimony, yet best proof may be admitted that the party takes a different estate from that which he would have taken if the words were liberally understood. Thus the circumstances of a family, fortune are often admissible to construe a will.

So too where there is an absolute deed, parol testimony of facts is admissible from which the triers can determine that it is only a mortgage. Such facts as grantor being in possession, his giving notes at the time of conveyance & paying interest there & his not buying any rent he - grantee having a part of the land &c. all such circumstances as these are inconsistent with the nature of an absolute conveyance.

But parol testimony is admissible to rebut an Equity. The equitable often differs from the legal construction & the rule is parol testimony is admissible to reverse the legal construction by rebutting the equitable. This is called "rebutting a Equity" e.g. a devise to his wife \$400 & makes her his executrix. Now the legal construction of this instrument & where there is no residuary legatee is that the residuum go to the executrix unless the intention of the testator is clear that some other person should have it. In this case no such intention appears. Of course at Law she is entitled to the whole residuum under that will. But in Chancery the rule is, that where there is no residuary legatee, the residuum shall go to the next of kin, if

Personal estate subject by deed to the heir. On the mistaken construction of this will, the executrix was entitled to this ~~estate~~ ^{estate}. But the rule is that the legal construction may be corrected by rebutting the equitable - This is rebutting an Equity -

Another species of proof is called presumptive evidence. It sometimes arises from a presumption of Law, & then it is either presumptio juris ad iure or presumptio juris de facto & sometimes a presumption of Equity, at other times a presumption arising from the act of the party, & also a presumption which arises from circumstances, which cannot upon any rational hypothesis be reconciled without supposing the existence of the principal fact, i.e. the fact in dispute.

- 3 F.R. 365 1st of evidence presumed from the act of the party, e.g. a clergyman receives tithes & is sued for non residence, proof of the fact that he has received tithes is sufficient proof of his residence. So an Innkeeper who writes over his door, that he keeps post horses to let, if sued for an offence against the post Horse act, evidence of his sign over his door, is sufficient proof of his having a licence.
- 3 F.R. 637 - 2nd of evidence presumed from the act of the party, e.g. a clergyman receives tithes & is sued for non residence, proof of the fact that he has received tithes is sufficient proof of his residence. So an Innkeeper who writes over his door, that he keeps post horses to let, if sued for an offence against the post Horse act, evidence of his sign over his door, is sufficient proof of his having a licence.

2nd of circumstances which raise a presumption is - The case on this subject is, that a proof of such facts as are inconsistent with the claims of one party but consistent with those of the other, will enable the jury under direction of the Court

Evidence

1 Ld. 22. 12 Co. 5. To presume the particular fact in controversy. This title is
 Comf. 103. 370. 399. presumed on a long possession
 3 TLD 139. 346. 1225. To a common recovery has been presumed.
 Thus too an undisturbed possession for 20 years, is sufficient to
 Con. 595 - presume a grant.

To prove in this way only, a tenant in common may be
 dissolved by his fellow commoner i.e. by a unintended possession
 for a length of time & enjoying all the profits - this will presume
 a release. also where a bond has not been put in suit
 1 Pl. R. 532 - for 18 or 20 years & no interest paid on it the Law will
 presume it paid.

Some insulated cases -

Case 8.

When the Defendant calls upon witnesses to prove his fair
 character, the Plaintiff may impeach it by testimony.

In criminal prosecutions which subject the Defendant
 to corporal punishment, he may prove his general good
 character; but never in a civil cause in England -
 under it he put in issue. But where he is prosecuted
 only for a penalty, tho the cause of prosecution arose
 from a fraud of his own, he cannot prove his own
 general good character.

2 Post. Pl. 532 a.

Competency may produce testimony to show that his
 witness who is impeached has always told the same story,
 to corroborate his testimony.

1 Pl. 406. 7 Pl. 138.

A witness is not compellable to testify to any fact which
 will subject him to a civil suit, or charge him with a debt.

Relevance. Sometimes irrelevant e.g. it does not tend
 to prove the fact in issue. If irrelevant the Court will
 reject it. but if relevant it may in any case be admitted then

20th 189. These could not be rejected. Long & Limsey v. Belmont 11th
 Feb. 1874. 5 Brod. & W. 111, on the whole in any part of the issue. I must be admitted
 394. Dwy 374
 2d. 1st. 288. tho it does not prove the issue.

If the issue formed is wholly immaterial & the evidence
 bears on that issue is it to be rejected? It seems that it must be
 admitted. yet rejection would be immediately asserted why the
 not exclude it?

Of the Examination of Witnesses -

At Common Law, testimony is obtained only viva voce
 in Court. This is much the best because of the examination &
 cross examination of the witnesses, & there is so much danger
 of fraud & of perjury. Formerly, the rule was to
 examine the witness either on the voir dire as to any
 186. fact which rendered him incompetent, or to call the other
 witnesses to prove the fact - the party against whom he was
 introduced had his election, but he could not do both. For
 upon the voir dire he swore that he was not incompetent
 the other party could not prevent him from testifying,
 tho he could lessen his credit. If he appeared incompetent
 the objection was immediately taken, for if after examination
 & cross examination he appeared incompetent, no objection could
 then be made. But the modern rule is to swear the witness
 1st. 189. in chief in the first instance, & if he appears incompetent
 at any time during the trial the objection may
 then be taken -

Lecture 7th

Pratt 129 H
 Co. Litt 158^b
 4 Inst. tit. 748
 Q. do. 670. Falk 153

When the witness is ^{called} called to any, & ^{examined} examined
 he is first to be examined by the counsel who call
 him - He is examined as to his knowledge of the fact
 he is to prove, then he is cross examined & may be
 asked any questions that can relate to the fact or
 cause - But whether he can be asked any questions
 foreign to the cause, to affect the character & credit
 of the witness is not settled. It has always been so
 - The old Law that a witness could ^{not} be asked any
 questions which tended to criminate or subject him
 to punishment

was ^{supra}

A man cannot be supposed to answer for all
 the transactions of his life.

Peake 187
 190 -

It is a general rule that leading questions are
 not to be put to a witness - He must tell his own story
 without any assistance from the party: But lately
 this rule has been relaxed in England, & leading
 questions have been allowed where the witness appeared
 evidently hostile to the party who called him - When
 they may & when they may not be asked is to be left
 to the discretion of the court -

Peake 190.
 352 454.

The witness when examined must testify to
 facts within his own knowledge - But he may
 refresh his memory from his book or memoranda
 if he can then speak from recollection positively.

1 East 467 -

If he has no recollection except from finding it, in
 his book the book must be produced

Evidence.

145

Ordinarily witnesses are to state facts, & not to draw any ~~inferences~~ ^{conclusions}. Sometimes they may state their opinions
 in questions of Science. Persons who are sworn in this subject
 may give their opinions on oath: for that is in law a true oath. ^{can}
 1st. ~~It is not the duty of a witness to give his opinion on all the facts before him, but only on those facts which are in issue.~~
 2nd. ~~It is not the duty of a witness to give his opinion on all the facts before him, but only on those facts which are in issue.~~

Of the Number of Witnesses

At Common Law, the general rule is that the particu-
 lar number is necessary or may be as good as four.
 Co. Litt. 6 The rule is that there be enough to satisfy the triers of the truth.
 What is to be proved.

By the civil law two witnesses were required to prove any
 fact, & this is the practice in most European Courts.

In the Common Law there are some exceptions. In cases
 of Perjury & Treason two witnesses at least, are necessary.
 In the case of Perjury the reason is that one oath is against
 that of another, so two are required to counterbalance.

The same reason applies to Treason, for that
 the oath of allegiance is as strong as an oath in case of a
 civil suit, but the true reason is that a man regarded as to be
 10. mos. 195 paid to the lives & liberties of men, which is in itself a
 4th. 36% times would be much more dangerous by influence treasons and
 conspiracies.

So in Chancery when a person swears on oath the
 Court is bound to make inquiry, & at least two witnesses to
 disprove that oath. In common law two witnesses at least
 are required in a civil suit, & is equivalent to two in all criminal
 prosecutions.

EVIDENCE

of the mode of compelling witnesses to attend in Court
 When witnesses will not attend voluntarily the Law has
 provided a compulsory remedy by a writ of sub poena
 If a person whose testimony is wanted has in his
 possession and deed or writing the production of which
 is necessary to the person requiring him, a special
 clause is inserted commanding him to bring it with him.
 In this case the process is called subpoena duces tecum
 or notice may be given him at the time of serving
 the subpoena to produce it -

This subpoena is issued by the Court & signed
 by the proper officer, the Clerk - In Connecticut
 it may be signed by any magistrate - It must be
 served a reasonable time before the trial i.e. such a
 time as will enable the witness to arrange his affairs
 & appear - the service is made by delivering a copy to
 the witness & showing him the original - & to oblige
 him to appear he must be tendered a reasonable
 sum for his travelling expenses to & from the place
 of trial, & for his attendance there, in England according
 to his rank & situation in life - In this country the
 time of subpoenaing & fees for attendance are generally
 established by each State.

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If at these necessary steps are taken & the witnesses refuse or neglect to attend - the party has three remedies: 1st He has a caus to take & bring his body forthwith into Court, or 2nd He may proceed with the suit, & if he sustains damages by reason of his absence, he may sue him in a action ad communem legem for those damages, as if he were his clerk; and in this case may he may recover the whole amount of the sum demanded i.e. the whole loss by the event of the suit or 3rd He may have an action on the Statute 5 Eliz. for the penalty for non-appearance.

If a witness stands mute, i.e. refuses to testify, he may be imprisoned as for a contempt; it has been said, only during the session of Court, but in English Law there is no limitation of time beyond which he cannot be imprisoned if he continues obstinately to refuse giving his testimony; & the Court of King's Bench have imprisoned a man three years in one instance - the case of Highly mentioned Spencer

Chancellor Lansing imprisoned (in New York state) the Mayor of the City of Hudson, for refusing to give his testimony; who on being released thro' Habeas corpus by Ambrose Spencer was again committed Judge Spencer again released him, & Chancellor Lansing immediately re-committed him with a threat to commit Spencer if he again carcerular him

If the Chancellor's conduct was approved by a full court & the Mayor was obliged at length to give his testimony.

If the subpoena is not served within the proper time or the witness is not tendered his expenses, he is not in any way punishable for non attendance.

If a witness is in Custody a Habeas corpus ad testificandum is necessary to bring him into Court.

Intimus R. 346

Coupl. 672-

3 Burr. 11640.

To obtain this writ, application is made to the Court or Judge thereof, before whom he is to come upon affidavit of the party applying, stating that the party is a material witness. On this affidavit the Judge will if he thinks proper grant his writ for the writ i.e. that it be made out. If the application is not a bona fide one as to remove a prisoner or execution to give him a little liberty, the Court will refuse it.

Keble 173-

If a witness is in custody on a charge of high treason, or as a prisoner at war, the Court will not grant this Habeas corpus without the consent of the Secretary of State.

Jong. 419.

This writ when granted is delivered to that officer in whose custody the witness is, who is bound to bring him up, on being paid his reasonable charges.

If witnesses being privileged from arrest

The person of a witness is safe from arrest in any civil action while going to, staying at or returning from the place of trial, & as in the books, cundo, morando, credendo.

Evidence.

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10th L. 193. i.e. if he be arrested, the Court will discharge him ^{by a subpoena} on motion, & commit the officer - In Con. he cannot be arrested, for he has his protection if he pleases before he sets out.

1/2 Car. 189. This rule of privilege has been extended to an arbitrator. The Court, too, are very liberal in extending this rule. e.g. a witness was released early in the morning, that he might be at home when dining - He was discharged & again a witness was released at 4 o'clock P.M. staid till after dinner next day & was arrested returning at 4 o'clock on the evening - he was discharged.

2^d of Written Evidence

This divides into two parts, Public & Private: Public written evidence is divided again into 1st matters of record, & 2^d other matters of an inferior nature - 1st these are matters of record; This is the highest evidence that can be introduced into any Court - It is the highest in existence - It is of two kinds, 1st Acts of Parliament - 2^d The proceedings of the King's Superior Courts of Justice - 1st Every act of the Legislature done in its legislative capacity is of record & these records never can be questioned. Still however whether constitutional or not, is to be submitted to the Judiciary. These acts are either general or special, penal or non penal i.e. beneficial - vide Municipal Law.

Lect. 8th The method of proving Legislative acts - a public act is not properly the subject of proof, for it is a Max. of the Land generally, which the Court & Jury are bound to know without proving, it is proved to them - There a public act is usually read to refresh the memory of those who are to decide upon it & whenever need reference is had to the public statute book.

published by the authorities of the State. But sometimes a public Statute must be proved, as where it is used to repeal a special Act; also when one Statute exempts the party from a penal prosecution incurred by the violation of another Statute.

But a private act is not noticed by the Court except in judicially. He who claims benefit or exemption by it, must produce a copy, in order to substantiate his claim or defence.

A general Law may be taken advantage of by any person in the community. But a private Statute only by those included in it.

of Records of Courts.

These are precedents of the Law to which every man has a right. Therefore they cannot be removed for private advantage. He who wishes to take the advantage of a Court record must prove it by copy. This is the best evidence, as the original cannot be had. These copies are of three kinds 1st Those exemplified under the great seal 2nd Those exemplified under the seal of the Court in which it is a record & 3^d a copy examined by a witness & proved by him on oath. If the 1st there are records of the Court of Chancery or other Courts returned there by certiorari & copies of these the Jury are bound to give credit under pain of attainder.

Bull. A. 1. 226

Bull. A. 1. 226.

Page 28-

Co. Litt. 282.

q. 11. 14.

Bull. A. 1. 226.
10 Co. 93. 10 Co. 745.

Evidence

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1st 745 When such a record is exemplified, the whole is required a part is not sufficient - for the construction must be on the whole

2^d Records of the Court where the proceedings are. These are 227. Had 1833.1 higher authority than sworn copies. The reason is that the Gill 18.19 Judges are more capable & critical, than the persons who examine 21.18.19 their own records. Therefore, no other proof of their ~~the~~ authority is required than a sealed copy of the Court. The seal 21.18.19 of a record, need not be proved to be the seal of the Court, for that 21.18.19 is supposed to be known by all.

Letters patent are matter of record, for they are under 21.18.19 the great seal.

In Con. copies are always authenticated under the seal of the Court, provided they are to be used out of the Hall - unless they are not -

3^d. As to copies examined by a third person & proved by him - 21.18.19 Bull. N.P. 228. - These are called sworn copies.

But sometimes, copies are admitted without being sworn to 1.18.19 as where the record is lost. But there are all cases in which 1.18.19 Talk 285. the right in question has been long enjoyed, & there 21.18.19 vent 257. has been some previous judgement of the Court, in favour of the party, who produces it

To entitle a party to introduce a copy of a record 21.18.19 2 Burn. 722. he must prove that it is an ancient record - 21.18.19 for by the present English practice of a record being lost, the Court will engrave a fresh one.

Evidence

Rehe 31. Gilt. In England offic. copies are granted & authenticated by the officer appointed by Law for that purpose, & are admitted without further proof - In connection they are under the seal of the Court, & authenticated by the Clerk, attended with the certificate of the Chief Judge that the person signing as clerk is the true Clerk.

Comp 17 Rehe 30 - In England copies of Judgement must be stamped.

Co. Litt. 117. Exp. 741. Records can be denied only by the plea of undue record, & issue is regularly closed to the Court who determine wholly by inspection.

In 48 Rehe 29 -

2 Roll. ab. 574.

ut supra

Bro. Ch. 131. 960.31

2 Roll 574. 460.71

Id. R. 14.

But where the issue is on a matter of fact connected with the record, it is to be closed to the Jury, e.g. If the issue be whether the Defendant appeared, it is to be closed to the Jury: but if it is whether he appeared on a day certain, it is to be closed to the Jury, because the day is a matter of fact & not of record.

Paul. N.B. 230.

1 Bro. 117. Exp. 742

Where a record is relied on as the ground of action, it can only be put in issue by the plea of undue record. But where it is only the instrument to the action, the issue is to be closed to the Jury & the matter of fact tried by them.

When a record is put in issue, a day is given to produce it. If a record of an inferior Court the party pleading it, must sue out a certiorari to the officer of that Court who returns it. If of a superior Court, certiorari from Chancery into which it is returned,

- Exp. 749. - A finder sent by a mittimus to the Court a de et pleas
 2 Take 28 note. an officer whose business it is to keep records may be
 Q. 210- examined as to the state of the record, but not as to the contents.
 If words have been struck out of a record which
 under it erroneous, witnesses may be examined to show
 that they were improperly struck out. But they never
 186 R. 644 can be examined to justify a record, to show that to be an
 4 Sum. 2267. alteration, & showing the record was made correct, & that
 it was improperly made.

Section 9th When & how for a Record in evidence -

- a variance in a part material between the alle-
 - gations in the pleading & the record, prevents the record
 from being any evidence at all. ex. gr. Plaintiff
 Exp. 744. declares on debt or judgement under a County term
 H. Bl. 48. 137 & on the plea of nil tunc record & the record produces
 (Dyer 87. was a judgement entered in Easter term '88, this is
 adjudged to be a failure of record & Def. has judgement

- It is a general rule that a verdict or judgement
 can be given in evidence only between such as were
 parties to the suit in which it was given or their privies.
 They ought to be bound; for it is an established rule of
 Peake 34-5. Law that a fact which has been once directly decided
 Exp. 736. shall not be disputed by the same parties or their privies
 7 T. R. 269- either in the same, similar or concurrent action
 Exp. ca. 84. If this were not law, litigation would be endless. Thus
 279. the judgement of a Debt is conclusive evidence of its
 existence against the party to that judgement & his representatives

Evidence

On the same principle that the judgement concludes the Defendant from disputing the Debt, it precludes the Plaintiff from recovering a greater sum than was awarded him by the judgement. Therefore if a Plaintiff claims a debt composed of different items & attempting to prove the whole, fails as to a part. He cannot at any future time, when he has more testimony, recover the other part. Judgement is conclusive against him.

But if he never attempts to give this part of his demand in evidence, he will not be estopped by the record from afterwards recovering it.

On the same principle, where a judgement as to personal property is given for the Defendant on the merits, it precludes the Plaintiff from making a demand on him, either in the same form of action, or in one of equal degree.

A brings trover against B. for taking & converting his Horse, issue being closed, Defendant recovers on the merits of the case; afterwards A sues B in assumpsit for the value of the Horse, the former judgement is a bar to this action.

Again, A sues B in trespass for entering on L's land & taking his Horse; Defendant pleads to the merits & recovers. Then A sues in trover for taking the Horse the former judgement is a bar to another recovery.

The same rule holds as to actions concerning real property
 But. N. D. 232- for if a dispute arises respecting lands & any fact comes
 Peake 37. directly in issue, the finding of the jury on that fact
 is received as evidence of it in any future action between
 C. & L. 29. the same parties or others claiming under them, tho' the dispute
 Esp. 736 is in respect of other lands than those in the former
 3 East 346 action; the object of the action makes no difference as to
 the right decided in the former action.

But a verdict or judgement is no evidence, except
 Esp. 736 between the same parties or those claiming under them
 Peake 38. The reason of this rule is, that a man ought to be heard before
 his rights are determined, or his cause decided; & not being a
 party he has no benefit of cross examination: ex gr. A
 is indicted for a breach of the peace for a battery &c. com-
 mitted on B. judgement is rendered against him, afterwards
 730. B sues him in assault & battery in a civil action, judge-
 ment on the former trial is no evidence against either
 party or in favour of either party. (and it can be
 Peake 37. given in evidence between the same parties only where
 Esp. 737. it is a matter which has been in issue in the former
 But. N. D. cause - for if the verdict or judgement is false there is no
 232 - wrong - he ought not therefore to be bound, unless
 Hobbs 53 the matter was in issue -

3 Mod. 143-

Hard. 472.

But the subject of the controversy need not be the same, if the point decided is the same.

The benefit of this rule is mutual, i.e. as where in an action by A against B and a recovery, A could not give this ~~judgement~~ ^{judgement} in evidence against B. so B shall not be allowed to give it in evidence against A; for it would be unjust to suffer that to be given in evidence against a man which he could not have derived any benefit from - Thus A & B assault & batter C. A is prosecuted for breach of peace, & judgement is rendered against him. C then sues B in a civil action for the assault - now the Defendant B could not (if A had been acquitted) have given the judgement in evidence to clear himself.

To the rule that a verdict or judgement is only evidence between the same parties, where the same point is in issue, there are some exceptions. One class of which is that of privies in estate. Where a man is privy in estate with a person who recovers a verdict or it will be evidence for him, tho' had it gone the other way it would not have been evidence against him - as where there are several remainders

Peake 38

Est. 636-7.

3 mod 141-

Hard 472

Gill. L. Ev.

34. bene-
tine of Hardw-
311-

Peake 38.

Hard 426.

Evidence

157-

Peake
39.
Kinsey v. B. B.
- Doug.

in the same deed here verdict is for one as evidence for all. So too a recovery against a tenant for life where the aid of Reversion is prayed, it is evidence against the Reversioner in an action against him & the tenant.

If the aid of reversion is not prayed & he is sued by the tenant for life, the tenant may introduce the judgement as evidence of an ouster: for if the reversioner can prove that the tenant had a good title, he shall have judgement for his costs -

on the same principle, if the warrant for the land is not vouched by the tenant when sued, judgement
Esp. 797. over verdict against the tenant is no evidence against him

Peake except to them that he was ouster: But if he is
39 - vouched & a recovery is had against him, the judgement
Yelo. 32. is conclusive evidence against the warrantor.

See R. 730

Another class of exceptions consists of those cases where the question of controversy is a question of public right. Here the rule is that all persons standing in the same situation with the parties, are to be affected by it, i.e. it is evidence to support or defeat the right claimed. as a verdict finding the right of a city to take toll is evidence for or against all in the situation of the parties.

Peake 40

Esp. 737.

Carte 181.

Evidence.

1 Burr. 146. On the same principle a verdict which determines whether lands are or are not parcel of a manor, is evidence against all who may stand in the situation of the parties.

Gillb. L. R. 36. So too the finding a prescription made of tithing, by a King or Court is conclusive evidence a hence that none may be called in question, let the parties be who they may -

See back N. P. 156. So too the finding of the right of election of a Church warden, or a customary right of common is conclusive evidence when the validity of those rights are called in question.

Take v. S. 24. So too the finding of a party as to the liability of a parish to support a public highway is conclusive evidence against that parish when tried or non repai Cas. 355 -

Yours per verdicts in criminal cases, are evidence in civil action. & vice versa seems not well settled. One thing is clear that a verdict in a civil case is no evidence of a criminal intent. e.g. assault & battery. And the better opinion seems to be that a verdict in a criminal case is no evidence at all in a civil one. The reason of this opinion is that the verdict might have been

See 41 se -
1 East. L. 994 -
Gillb. L. R. 31-2 ante
Dial. 245 -
12 Nov. 319. bars
tim. of Harrow. 211 -
Latk. 283. L. 325.

procured by the testimony of the party interested. A Court cannot know judicially that it has not thus obtained.

It has been said that if the testimony of the party interested forms only a part of the evidence, the verdict ^{in the Court rule;} might be used in a civil cause. But this cannot be Law.

Verdicts are no evidence, until final judgment is rendered on them: i.e. they are no evidence of the facts having been legally decided - for the judgment might have been arrested, or a new trial granted.

Peake 50. But the verdict is good evidence to show that there was a trial between the parties, & this is often done, to show what a witness swore on the trial, who is now dead: & for this purpose even a non fact is evidence.

Peake 50. But a verdict on an issue and a placitum is full proof of the facts which it finds, the verdict is entered - the reason is, that the decree is proof, that the verdict was satisfactory, & that it stands in full force.

Peake 50-1. This issuing out of the Courts of Westminster are not considered as records, till they are returned & filed in Court: If this is done, & the writ is the gist of the action, a copy must be produced. The general rule is, that before a copy of a record is examined, the record should be drawn up in form: & this for two reasons.

Evidence

1st It is not a record until produced in Court & plead as
 Gibb. L.E. 22 a roll, altho execution may be taken out immediately
 Peake 33. upon the judgement, papers being signed -

(2^d until it is plead, it is transmissible & therefore
 the original may be produced & this is the best ev-
idence - yet when it is the practice of the Court
 to consider their minutes as judgements, copies

Good. 17.

Peake 34.

those minutes are good evidence. As is always the
 case with the minutes of the House of Lords on a
 judgement rendered by them on appeal from below

Lect 10th

When a record is complicated, it may be necessary
 it must be a copy of the whole; for a part may
 bear a different construction from the whole
 taken together - Therefore if an action is brought
 against a creditor for taking goods of his debtor
 on a judgement in his favour after it was
 reversed - the Creditor in his defence must
 show both the judgement & the execution, for
 if the judgement be reversed, he must know it,
 he being a party. But had the action been brought
 against the officer, he might defend under the
 execution merely - for he is not presumed
 to know that the judgement was reversed -

1 Ld R 433.

Evidence

10th

1. Receipt for or against a common carrier with the goods
Comm. Dig. 44 by him given for delivering goods by mistake is evidence against
Ex. c. 5. him in an action brought against him for the same goods by
Bul. N. D. 243 the true owner. Not as the finding of a Jury determining any
Peake 39n point, but as evidence of a confession of the party that he had
Exp. 738 the goods in his possession

2^d Of Public evidence not of Record. These writings
Peake 51 are of various kinds & some of them are of so much an
Exp. 751 authority that copies are admitted, & to others a degree of credit
 is given which is not allowed to mere private instruments
1st of the Proceedings in Chancery. There are no
Exp. 751 matters of record in the judgement is secundum equum
Bul. N. D. 235 et bonum & not secundum leges Angliæ. Of course,
Peake 51 they are not incidents of Justice, but founded on the circum-
 stances of each private case

As to the bill. It was formerly holden that a Bill in
 Chancery was evidence against the Plaintiff in the Bill,
 of the facts therein stated. The reason of the rule was at
1 Lill 232 that time is now it was drawn up & presented by the Counsel
Exp. 751 & the court say it shall not be presumed that it was
Peake 55 presented without the privacy of the party: of course as the
 party knew its contents, it is presumed the contents
 statements to make are true, i.e. it shall not be presumed
 that falsehood is mingled. But it is now taken that
 a bill is evidence only to prove that such a bill was
 filed, & to treat such facts as are subjects of reputation

Evidence

Bul. N. 235.

T.R. 23

Peake 54

Bul. N. 236.

Fide. Exp. 196.

and hearsay evidence as Pedegree so: the reason is that most of the facts stated, are mere suggestions of the Counsel to extort an answer from the Defendant.

So a Bill of discovery is only evidence that it was filed.

Fide. R. 326.

Peake 54 Exp. 196.

But as to the answer, the rule is different. For the Bill is no evidence against the Plaintiff yet the answer of the Defendant is for it is on oath. Answers are not mere suggestions of the party or Counsel, for the Plaintiff never answers to his Bill, but the Defendant does to his answers.

Peake 54

Yet this only a confession & therefore not to be admitted in hearsay confessions are inadmissible.

Bul. N. 79

Exp. 152.

2 Bul. 70.

3 mod 239.

On this ground the answer of a Defendant by his guardian in Chancery is no evidence against the Defendant & for the same reason the answer of a Trustee is no evidence against the cestui que trust, for the confession of the trustee would be no evidence against him so his answer shall not be.

3 Bul. 295.

Peake 54

In accordance with this qualification of the rule, it is doubted how far a feme covert should be prejudiced by her answer in Chancery. The objection that her answer was res inter alios acta does not

Gill. L.C. 51-57

Peake N. 263

Peake 55.

applies here as in case of other legal proceedings. For in an action against the answer of his partner to a Bill filed in Chancery against him by other creditors was admitted.

Evidence

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as evidence of the facts stated in it. So also the voluntary affidavit of one man who was jointly interested with another, is evidence in an action brought against both.

As a general rule, the whole answer, if a material must be read, & heard, on the same ground that in a case copy of a record must be produced, viz that it is read as the answer of the party, & a fact does not controvert his answer. Peake 55 - On this ground it was decided that when one answer was put in by the Defendant, & on exceptions taken to it, 1 Leach 180 had put in another answer in an indictment against him for Perjury, he was permitted to read the second answer in explanation of the general terms of the first.

If an answer is read in a Court of Law, the party producing it makes it evidence for the Defendant of all the facts stated in it. But this is not conclusive in favour of the Defendant, tho' it is conclusive against him. The Plaintiff may dispute the facts stated in the answer. Peake 56-7 - in the Jury if they see fit may believe one part and disbelieve another part of the answer which they do in all other cases, in drawing such conclusions as result from all the circumstances taken together.

But in Equity it is different it is there held that if a Defendant admits a fact in his answer, & denies a distinct fact by way of avoidance, he must prove it. The reason of this rule is that he may be have admitted the

Evidence

Coke 56 n.

Gill. L. E. 52.

Bal. & C. 237

Esp. 732 -

fact out of apprehension that it might have been proved therefore the admission ought not to profit him, so that what Le says in avoidance shall pass for truth.

There is one instance, in which a part of an answer by the Defendant in Chancery is evidence without the production of the whole. viz. where a witness in an answer has shown himself interested in the event of a suit depending at Law. In this case, that part of the answer which shows the interest of the witness, may

Peake 57

Esp. 759

Bal. & C. 238 -

be read & the rest included: & this rule is founded on absolute necessity. The party at Law, wishes to exclude the answer in Chancery

on the ground that he is interested in the event of the suit. To prove which that part only may be read

(3 of affidavits) These made in the course

Gill. L. E. 52 -

Esp. 753. Bal. & C. 238.

of a cause are nearly similar to answers in Chancery (and thus may be given in evidence against the party who made them). But there is this distinction between answers & affidavits.

Bal. & C. 238 -

Peake 58

1st An answer is always given under oath, therefore supposing the bill & answer the presumption is that it is true to, & such presumption must on principle

be inevitable, for it is a standing rule that no answer can be made except under oath.

But a voluntary affidavit must be proved to have been sworn to - it is not so presumed - e.g. an affidavit before a Master in Chancery that an estate is clear of all incumbrances is not sworn to of course - but it must be proved to have been sworn to sed quare de hoc regula -

On the same principle in an indictment for perjury by an answer in Chancery is sufficient to bind us only the bill & the answer, without proving the latter to have been under oath. But on an indictment for perjury committed on affidavit it is necessary not only to produce the affidavit but also to prove it to have been given under oath.

Yet Courts have gone so far as to say that when there is proof that at a certain place the affidavit was used, it may then be read without showing that it was under oath; for the presumption is that it was given under oath, since no affidavit can be read as evidence unless it be under oath.

The presumption in this case is not like that in the case of an answer in Chancery, for this may be rebutted. If then an affidavit has been used in a cause if no objection be made, it will not be required to be proved to be given under oath.

Plake 58
Esp. 754
3 mod 36.

2 Burr
1189

3 mod. 36.
1 How. 397.
Esp. 754.

Evidence

But if the party against whom it is introduced can show it was not given under oath it will be rejected.

In con. an answer in chancery is not sworn to of course - never unless required by the opposite party. Consequently here answers as well as affidavits must be proved to have been given under oath.

Bul. N.S. 238-

Exp. 454-

Peake 58-

(2) a copy of an answer may be given in evidence for it is the best evidence of which the case admits. This follows from the fact that an answer is a part of the records & pleas of the Court & so cannot be removed.

But a copy of an affidavit is inadmissible for it is not the best evidence that can be produced. Since he may have the affidavit itself, it is not a public record

Gill. D.C. 57

Of Depositions

These usually come from the chancery but not always, yet they are subject to the same rules.

Peake 58

In general, it may be observed, that depositions are not received as an answer in vice, as an admission of the party on oath, but as the next best evidence, instead of some of which the party has been deprived.

1 Atk 445-

Lalk 286. Str 101.

2 Ld. R. 1166. Peake 58

59 Exp. 455. Goddard 324

It is to be compromised & contradicted him - But if the witness be dead or cannot be found after diligent search his deposition is evidence.

Evidence -

165

2 H. 900 And it is also said, that if the witness fall sick by
1 Mo. 283. the way, his deposition is evidence. Peake thinks
Peake 59 it not sufficient cause to admit his deposition, but
Exp. 455- good ground to postpone the trial or for continuance
Bulst. 239. of it.

W. 101 If a witness makes a deposition & afterwards
1 Mo. 286 becomes interested, his deposition is no evidence &
Exp. 456. even to himself is not permissible of course. Godd. 326.
57 Mo.

The reason why depositions are even admitted
9 Co. 76 a is because they are representations of a witness under
20 W. 360- oath, where he is liable to cross examination; & in
A State Trials procuring which it is the duty of the commissioners to
265. Peake elicit the whole truth.

These depositions are sometimes taken in secretum
re memoria, as where the witnesses are very
aged, infirm, or are about to leave the realm, & some
person expects he either to need their testimony -
Upon application made, stating that he is in danger
of losing their testimony. Chancery will appoint com-
missioners to take the depositions. ^{the usual}
^{most of the States have stat. & allow Commissioners to take depositions}
is made under oath. ^{In Eng. Stat. 5 Geo. 2}
they will issue an injunction to prevent

Peake 60 any person from objecting to those depositions in a Court
of Law, & if there be objection Chancery will punish as
for a contempt.

P
H

Lecture 11th. As a general rule, Depositions are not evidence for or against a person who is not a party to the suit, & for the same reasons that we select. Judgements are not, viz, that is no benefit of cross-examination.

Winds: 492 -
Pake 546.
Exp 456 -

But the same exception exists that there is against verdicts & judgements now where the question is one of public right, as in the case of Customs & Tolls &c.

So also a Deposition may be used to contradict what he now swears. So too by special act of Parliament
Deq 364.
R. v. D. 239 & 40. 5 Geo 2 depositions are evidence against all persons in
R. 22. 290 - certain cases there enumerated.

The method of taking depositions in Connection is regulated entirely by Statute. If a person live more than 20 miles distant from the place of trial, his Deposition may always be taken by any magistrate not being given to the other party or his attorney to a person to cross-examination &c. he takes them they must be sealed by the magistrate taking them & directed to the court where they are to be used, there to be opened by the Clerk.

In order to give in evidence an answering deposition a foundation must be laid by proof of all former stages of the proceedings - in order that the Court may see all the bearings of the evidence & that they may determine whether they were regular. For if not the deposition might amount only to an affidavit.

Jones 164 -
Hills 166. Gillb. 56.
65. Serke 66 -
Exp 657 -

As to the regularity of the proceedings the rule is if the Deposition is irregular in form that no cause was before the Court, the Deposition is no evidence in any other cause. For if the cause was properly before the Court, but dismissed, because the subject was not fit.

for Equity, to make a decree about these depositions so far evidence
 12d. 2. 735 in the causes to the same extent as if the bill had not been thus
 dismissed - But if a bill is dismissed as lost or cannot be found
 then the same is evidence without production of the bill: it is the same.

160b. 112. Similar ancient depositions have been received as evidence without
 2 Kble. 31 either bill or answer: for formerly the Court did not insist on the bill
 Esp. 754. & a decree as previous necessary steps to the making of a decree, i.e.
 Bulst. 8240. These in Court & ancient subscriptions were received as evidence
 Peake 678. on this ground - yet when a bill is lost, the party ought to be
 justified by great length of time - or some reasonable evidence
 that it is lost & how it was lost.

Of the Decree in Chancery -

This is like a judgement of a Court of Law & subject to the same rules.
 Doy 222. It is evidence in cases where it respects private property or private persons, i.e. in equity.
 2 Nov. 231. evidence against the parties & all claiming thro' & under them -
 1 Kble. 21. But where the question is of a public nature, it is evidence for or
 against all persons standing in a similar situation to the parties to it.

A Decree is not evidence to prove its contents without the
 production of the bill & answer. But when the object of the matter
 Bulst. 1. 235 is only to show that such a decree was made, it is evidence of itself,
 Peake 68. without bill or answer, for that particular purpose -

Of the Proceedings in Ecclesiastical & Admiralty Courts.

These are not matters of record i.e. allowed the credit & record -
 But they are of such a nature that greater weight is attached to them
 than to mere private instruments & the rule is that a decree

Clark 69 Crph. 758. of either of these Courts is conclusive evidence of the matter
 See 11 F. 244 determined, it, whenever it arises collaterally in any other Court.

9 Mod 231. 1 Den 149. The probate of wills, letters of administration, sentence in a
 53. La Harrow matrimonial cause, administration of oases &c. & in general all
 Cas 108 — decisions where the cause arises collaterally in another Court

4 F.R. 250 The right to personal property under a will can be
 proved in no other way than by the Probate: & as like the
 3 F.R. 125. probate exists, no evidence is admissible to show that it was
 improperly granted, or after it is repealed, caused any
 payment made under it.

1 Cas 378. 10 Cr 445. But it may be shown that the Probate was forged.

A Probate of wills &c. is no evidence in any question
 concerning real property, for colonialial Courts have no juris-
 — action over real property.

10 Cr 336 2 B. & C. 262. In an action of trover for goods a judgement of
 11 F. 188. 2 Cr. 20. condemnation in the Court of Exchequer in favor of an inter-
 — motion filed is conclusive evidence that the right to those goods
 10 Cr 336 2 B. & C. 262. is not in the Plaintiff but in the Defendant.

And it is now noted that a verdict of acquittal in
 a Court of Exchequer in favor of a Defendant in the same way,
 10 Cr 336 2 B. & C. 262. viz. that it is conclusive evidence the right is in the Plaintiff.

But 11 F. 244 10 Cr 290. To make the judgement or verdict evidence, the question
 2 B. & C. 262. 10 Cr 290. must have come directly before the Court, & have been decided.
 10 Cr 290 2 B. & C. 262.

Of the Proceedings of Foreign Courts

The judgement or sentence of a foreign Court is evidence of
 the right established in the fact directly found in it. Where the party who
 claims is supported by it, voluntarily submits to the jurisdiction, his

Peake 70. Country cannot avoid its obligations in the same extent as it would
 2 Hbl. 403 be in the country where it was incurred but as prima facie evidence
 Day 1. - of a real action. e.g. to sell on a foreign judgment the principle
 4 R. 182. is the not conclusive evidence of a debt due to the P. for the Court
 do. 192 looks upon the merits of that judgment & sees whether it was rendered
 by the Court of the Country & how it was rendered (see below Walker & Walker)

As a general rule the Contracts as to their nature construction
 and validity are governed by the Law of the Country where such con-
 tracts are made. On this principle it is that a note given in a Country
 5 Hbl. 135 where interest is at 6 Hbl. may be enforced in another where it is at 5
 2 Hbl. 135 & 136 & the force of money is not in such case admitted.
 1 Hbl. 135 & 136 on 7 Hbl. & the force of money is not in such case admitted.
 1 Hbl. 135 & 136 on 7 Hbl. & the force of money is not in such case admitted.
 1 Hbl. 135 & 136 on 7 Hbl. & the force of money is not in such case admitted.

Foreign Courts. In England and Wales all those Courts which are
 out of the local limits of the King's Court. In 11 H. 1 the Courts of the
 different States are considered as foreign decisions & are not binding on England.

In all other cases except where the party voluntarily
 Peake 70. consents to enforce the judgment or sentence the English Court gives
 no aid but it is not to be taken as a rule that a foreign Court is not to be
 Ark. 135. taken as conclusive evidence of the facts proved therein, e.g. P. vs
 353 - a Libel action in which the question arose whether the Libel was
 8 R. 179. a Libel against the King or whether it was a Libel against the
 230 - foreign Court of Admiralty action on the Law of England that the
 a Libel against the King or whether it was a Libel against the
 a Libel against the King or whether it was a Libel against the
 a Libel against the King or whether it was a Libel against the

And if the Court state the evidence, whence they are to conclude
 Ark 358. how no Court can enquire whether the conclusion is right or wrong.
 But if it furnishes evidence of the facts on which the conclusion is based
 to an enemy or is not neutral

The Foreign Court of Admiralty condemns a Ship as a pirate vessel
 Ark 413. without specifying any cause the evidence that she was a pirate vessel, and
 that foreign Court state the facts on which that condemnation was founded
 it appears that the evidence on which that condemnation was founded

Calk. 361-2-3 -

Calk 71. 72 FR

523. 8 to 434 562

Law of Nations, but for not complying with some article trans local regulations or ordinances which are not acknowledged as the law of Nations, that sentence is absolutely void & is evidence for no purpose whatever.

Calk 363-4

Again, altho a vessel is condemned as lawful prize, yet if the grounds of the sentence appear manifestly to contradict such conclusion, the court will not discharge the uncertainties by declaring that the vessel has forfeited her neutrality.

FR 263.

It will occur in order to have the judgment or sentence of foreign courts binding, the subject matter in controversy must have been within the jurisdiction of that Court.

Calk 71.

And so the court itself must be one regularly established & acknowledged by the law of nations, not an arbitrary unauthorized institution - on this ground a condemnation before a council of a belligerent power residing in a neutral state, is absolutely void.

98 Calk 72

But if the condemnation is by the council of a belligerent power in a country in alliance of course & experience with the other countries such condemnation is good. For one country may authorize the other to act in fact acting on the law of nations for their common benefit & to preserve as their the hostile dominions or territories.

Calk 72-3

98 Calk 226

But of the proceedings is generally by a copy under the seal of the Court in which the condemnation is, but it is well settled that some evidence must be had in order to authenticate that fact.

Evidence -

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Lect. 12th

3 Inst. 25

Rule 45

If the parties submit to arbitration submit the matter when legal is as conclusive as a judgement at Law. It is an unerring rule that a legal award is a bar to a writ on the original Cause submitted.

But in law, passes no title to real estate for that can be conveyed only by the Form of Law. Yet it is not on title to real estate the claimant by an award & he in one party, & cannot be disputed in evidence when the

Acts of State - In Kings Exchequer which was to be proved by the printed Gazette published under the authority of Government - for this is the highest evidence looked for on such subjects. Thus, it is the custom in the navy office in England, to register the names of all seamen in the Kings service, when one dies to mark opposite his name Dead this is evidence of his

2 Inst. 188

Death - So the book of a prison is evidence to show the time when a prisoner was discharged but it is not evidence for any other purpose, - cannot be used to show the cause of imprisonment. It is not evidence to show the cause of imprisonment.

Peake 749. 5 B. 438

But N. 296. 249. Lead

435. 184 cas 427 -

To also the Log-book of a ship is good evidence when she became part of the crew - is under its protection To prove a particular custom, a printed history is no evidence -

1 Inst. 81. Lalk 281. 12 mod. 85

But authorities 77 that the 601

1867. 188. Feb. 48

1868. 140. Feb. 18. 82

1868. 172 - -

Surveys taken on public occasions are good evidence to ascertain the rights of individuals not named in them as in the case of Domes day book. Thus an act of these surveys & they always proceed on the ground that the act is done under the Direction of the public for the purpose of determining a public question. The facts thus ascertained are entitled to a degree of credit, to which no individual is entitled

The register in Churches of marriages is the

- 4 Burr 2057. and burials, is evidence of the facts there stated. & in all civil cases except an action of crim. con., a marriage may be proved by reputation. In crim con. & a public prosecution for bigamy, a party must be proved dead by positive testimony to prove the marriage.

Calendars are evidence to prove the facts which are often noted in them. Inscriptions on tomb stones &c.

- Ancient maps of lands are good evidence where they have accompanied the possession & go with the boundaries as adjusted by ancient purchases.

- 1st 93. 307. Corporation books concerning the public government of a town or city, when publicly kept & entries are made by the proper officer regularly, are good evidence of the facts therein stated. & true copies of these entries are admissible, because the books are kept for the public.

- Peake 91. Bank 189. On the same principle, of later years the books of a Bank have been admitted to prove the transfer of Stock.

Of Private Written Evidence

- 10 Co. 92. Peake As to this, the rule is, that the original, if in existence in 96. 8th Ed. 151. 7. the power of the party, is always to be produced: & unless it is produced, no evidence of its contents can be produced.

- Peake 97. If the original be in the hands of a third person, he may be sworn with a subpoena duces tecum.

- 1 Esp. Cas. 89. If there is a subscribing witness living, in a situation to be examined, he alone is sufficient, to prove this private writing, for this reason, he is presumed to know the circumstances & so is the best evidence.

- Lang. 216. -
2 Bos & Pul. 85.

Evidence

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And on this ground it has been decided that the confession or acknowl-
-edgment of a party to a deed, whether it is offered against him or a third person
will not excuse this testimony. 2 Bos. & C. 85.

The Courts have gone further for they have decided, that the
admission of the execution of a bond is an assurance in chanc^y filed for
Peake the very purpose of obtaining such admission is not itself sufficient
98 n^o to account for the non-production of the subscribing witnesses.

Subscribing witnesses are not indispensable for the validity of a
Peake 98 deed. Com Dig title, Part. D. 44. Therefore if there be no subscribing witness,
Peake A.P. 22 if one of the parties denies the execution of the instrument, or if it is alleged that the same
2c. 146 was executed by one of the parties, or if there be no other witness, the bond
may. 216. 72 of a fictitious person is signed as a witness, or if there be no other witness, the bond
184. 2. 365 writing of the party may be proved as the last resort.
5 T.R. 371.

A deed must be delivered to make it valid, & therefore the books say that
Gill 101. - But it is 234 a party who relies on it, either as a ground of action or defence, must prove the delivery.
By this is meant that the party must prove the delivery of his power to prove that
Peake if he be unable, the law raises a presumption in his favour, which arises from the possession
99- of the deed. This possession is prima facie evidence of the delivery, & is therefore sufficient
until rebutted.

Sealing is essential to the validity of a deed. If an instrument
had a seal & was deprived of it, formally, it could not be shown how lost, but Chanc^y
Peake 110. allows parol testimony to show how it was separated: & the better opinion is, that a Court
of Law will allow such evidence. It was never considered that parol proof
could not be admitted to show that the instrument once had a seal. And there
is no more reason to allow the proof of the fact that it once had a seal,
than the fact how it came off.

On the same ground it was anciently decided that a here a contract
5c. 23. was joint & the seal of one was broken off, it was void in toto
2 show but if the contract was here joint & several it would have
23-9. been good against the party whose seal remained.

may 43. Peake But if the subscribing witness is dead, or absent in a foreign
A.P. 99. 4. 22 235. country or is become incompetent by any reason, proof of his hand writing
1 Bos. & C. 360. 2 last 235. is sufficient. The better opinion is that it is not necessary to prove
2 T.R. 533. 15 P. 259. the seal of the witness to the instrument. This is considered as done
11c. 34. Gill 105. even the Law's writing to the instrument. This is considered as done
The case 7 T.R. 166 note

But the practice is contrary.

Peake

101.

Before this testimony is admissible, viz, the presumption of fair writing, a foundation must be laid for it, by showing or proving, the situation in which the witness stands, as that he is interested so that he may be interested on a matter of right.

If more witnesses than one are required to an instrument, the testimony of one in contradiction is sufficient, as with a will. But if all the subscribing witnesses are dead, this must be proved, before the fair writing of either can be proved. The reason of this rule is deduced from one great cardinal principle, viz, that the best evidence is (as long as one is alive, the fair writing of another cannot be proved, for it is not the best evidence.

1 Bl. Co. 384.

642

1 Burr 462

Peake 101.

The ground on which evidence deduced from the fair writing is admitted as proof, is that the writing of every one has something peculiar & distinct from the men, & so can be known by those who have been accustomed to see it; hence the belief of such persons, is always admitted as presumptive evidence of the fact both in civil & criminal cases.

Evidence

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Peake 92 The person who speaks from this Policy, must have
 93. With such a knowledge of the hand writing as enables him to
 354 - form an opinion as having seen him write, or had
 Peake 12. letters from him in correspondence. Merely comparing
 142 his letters is not sufficient.

Peake 104 In accordance with this last rule, Courts
 do A. P. 20. have in general expected all evidence arising from
 186. comparison of hands ^{this originates from ignorant Jurors who could not read & consequently could not make better the decision; after a con-}

But where the ambiguity of the writing makes it impossible for any person to prove it from actual sight of him writing, the testimony of a person who has had frequent opportunities of becoming acquainted with the hand ^{has} been admitted.

Peake 135- It is too when the witnesses differ as to the similitude of the hand writing, the Court have sometimes before a Jury whose habits of life lead them to an examination of hand writing, permitted the writing confessedly written by the party, to be produced & compared
 Peake appd. 404 vs. Pitt. 7
 4 B. 117 This is not allowed before an examiner & is not the
 4 L. R. 497 a departure from principle. This is not ascertained, but questions. -

When the hand writing of a person was concluded to be a forgery, after much other evidence the party was allowed to examine a Clerk

Evidence -

at the Post office, a horse business it was to inspect
 Planks & detect forgeries, whether from the appearance
 4 T.R. 497 of the handwriting, &c. he gives it to be forgery
 Baker 105 - Le Kingston at New Pines deems this to be Law

On principle this decision was correct
 For it is mere matter of opinion in the black
 & is similar to all other where an opinion may
 be given on oath - the true distinction was taken
 by Baron Rotham, viz - that it was for the
 4 Esp. N.S. 117 purpose to examine of a witness as to his opinion of
 the general character of the handwriting of a
 BAKER party, but it was in his power to enquire of him
 106 - whether upon comparing this with the instru-
 -ments confessedly executed by the party he could
 say it was a forgery - For this was evidence to be
 deduced from a comparison of Darts -

Then an instrument is in Power of the
 2 L.R. 201. Appointee party, no evidence of its contents is ad-
 3 do. 306 - missible till notice is given to him to produce it
 1 Esp. cas. 67. which may be given to the party, or his attorney
 D.L.R. 107. the reason is, because ^{he} he in possession may
 not know that it is wanted

Evidence

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Deake 108-9 It has been decided that if the party to whom notice is
 2 J.R. thus given, produces the instrument the other party may read it
 43-4 without fear the force of its execution.

And this rule has been extended to those persons who
 2 J.R. have come into possession of the instrument so as to be evidence
 34-1 against them.

But Lord Byron says that nothing but a decision
 of the House of Lords shall compel him to acknowledge the case
 as Law. Sometimes no proof of the execution of an instrument
 is necessary; as where there has been a possession of it for
 103. 103. thirty years without a riser or alteration. But this
 164-275. presumption may be rebutted in various ways -

So too when one testifies another the recital
 Deake is sufficient evidence of the recital used against the party or
 III those claiming under him - This is only secondary evidence
 100 & there must be some reason why the recital itself is not
 1 Salt. produced - But it is no evidence against a stranger, for the
 286. Admission cannot affect his rights. Besides recitals might
 2 Lev. 108. be easily forged by false recitals.

Admission
 102-11 615

vide Page - 42

Exp. 405
 1 Mo. 5/0.
 2 do. 1/50.

vide Page 42.

going & returning:
 Tender of travelling fees, & expenses for one days attendance
 is the usual practice in order to oblige witnesses to attend
 after this & summons - if witness will not attend - Co will
 issue a capias to bring in his body - if this does not
 bring him, the case is not quitted continued but must
 go to trial - & witness is liable to all the damage
 the party suffers by his non-attendance - this however
 must depend on the nature of the testimony which witness
 might have given - if of small or no consequence only
 small money or nominal damages are recoverable of
 him - If witness on being brought into Ct will not
 testify, he may confine for a contempt

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Account

Dec 17. 3rd M. 104. & to & ag^t the ex^t & admⁿ of joint & sevt^l & sevt^l.
 Com^t. Stat. extends in Com^t. ^{and joint merchants} as well as to the joint & sevt^l. H. themselves &
 is the resid. Legat^{es}
 who is by^t right Co. & their representatives.
 and to all resid. Legat^{es}
 Stat. Com^t. Title, Auditor. Distinction between Bailiff & receiver. Bailiff

is one who has rec^d. the property of any kind of another
 to improve for the owner & acct. & who is entitled to

in Dec 1792. an allowance or wage for his reasonable expenses &
 2 From 6. 107. 180. charges. Bailiff must acct. for profits which he has
 1 Feb. 2. Com. actually made, & for those which he might have made
 Dig. Acc^t. 4. 3. by reasonable industry.
 in Dec 1792

A Receiver is one who has rec^d. money to
 the use of another for which he is ^{sevt^l} to render an acct.
 & who has no allowance for his trouble: he is not
 to improve the money - e.g. in attorney
 who collects money - Bailiff he has no allowance.
 Law entitles him to none.
 He is not bound to acct. for the profits.

in Dec 1792. Exception is between joint merchants & sevt^l.
 Co. Dig. Acc^t. 4. 4.

i.e. the joint merchant who is receiver has allowance
 for having done more for his share
 & acct. for the profits - this for the benefit of commerce

in Dec 1792.

Dec. 19. 24.

From 20. feet.

to 10. 13.

in Dec 1792

Therefore from this distinction a Bailiff cannot
 if he is of action comp^d be supported.
 be charged as a Receiver. If he were so charged he would
 lose his allowance - So I suppose a Receiver can't
 be charged as a Bailiff -

Rob. at 14. Dec. 14.

Bro. Vin. 17. 1.

Account

18

Plat. Com extends the rule to Joint Ben^{ts}, sent in com. appearances & then Rep^s adm^{rs} of their contents then ex^{ts} to also in favour of Rep^s who are residuary legatees as^t their ex^{ts} to residuary legatees in gen^l as^t the ex^{ts}. This rule in Com. is extremely remedial.

Does it lie in Com. as^t Rep^s & of Bailiffs & receivers in terms. It does lie usage - or for the ex^{ts} & of those whose bailiffs &c have not accounted - It does not in terms extend to their representatives & but by usage.

Roll 118.

This actⁿ being founded on a privilege of contract from 89.

Re. Lett. 179. of 1180 89. -

4th action can. lie between more of one two parties.

In case of 3 partners of any person has wrong taken the party of the King. He can only remedy in a bill in 29.9.

Each is liable and can claim only as^t himself. 2 B & P. Dist. 2d. 2d. 492. or 493. Off. state that he delivered such property to Dep^t as Bailiff &

See not in case of Part. except in Regⁿ in favour of the may change of the passer as of Infants, 1 Rem. 436. 1 Atk. 182. 2 Rem. 495. 342. from 80. 1st. P. 118. Sec. 2. 2d. 9. Co. Litt. 29. ff

make him act in the C. & Exchequer - To in 29.9.

Each is liable and can claim only as^t Infants, here as well as there.

In declining in an actⁿ as^t a Bailiff, receiver & to render his actⁿ & that Dep^t refuses to render his reasonable acctⁿ to his damage &c & demands of Dep^t his reasonable acctⁿ together with his damages afores^d & costs &c. -

Account

In case of partnership & (I suppose) of Joint Debt
 as Jeff states that Defdt. has rec^d more than his part &c

Nov. 206.
 Co. Dig. Sect. A. 3.

Mar. 14.
 1 Nov. 87, or 57.
 2 Browns. 70.

It is said that acc^t. lies not where a sum
certain is to be recovered. — That acc^t. lies ag^t.
 a P^{ty} who has rec^d a certain sum; as if one delivers
 £100 to A. to trade with — the former shall not
 have acc^t. for the £100. — He no propriety in this
 rule. I don't comprehend the rule nor the reason.

Co. Dig. Sect. A. 3.
 Nov. 87.

Should it not be that for a sum certain one
 cannot be charged "as Bailiff" — acc^t. of acc^t. lies ag^t.
 a P^{ty} who has collected a sum certain — never doubted —

206.
 Co. Dig. 177. Bas. 21.
 2 Mod. 101. 1 Nov. 87. & K. D. 116.
 1 Roll. 14. 22. 116.
 Co. Dig. Sect. A. 4.

Nov. 87. L. K. D. 116-18. So if money is delivered to & redelivered in a certain
 1 Roll 110-14-16-22. event acc^t. lies.

Kirby 103.

Decided by superior Court that acc^t. will lie for a
sum certain.

Co. Dig. Sect. A. 4.
 Co. Dig. 177. Roll. 120.

L. K. D. 116. Nov. 87.
 Indeb. annuities in com-
 ments.

If a sum of money has been rec^d. to the use of B.
 acc^t. lies for B. & here P^{ty} must declare of whom the money
 was rec^d. — Still, if I deliver money to A. to deliver to B.
 for my use & A. delivers it, I cannot have acc^t. ag^t. B. — for
 he is not giving to the use — this distinction seems to me
 to be subtle.

1 Nov. 87.
 Roll 118-5.

Account

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If Bailor of goods wishes or agrees to deliver them

18 Jan. 89. acct. will not lie, but trover or detinue or special

18 Jan. 89.

18 Jan. 89. acct. on the case: For he cannot receive them to improve

Co. Dig. Sect. 2. Sec. 100. acct. for.

Co. Dig. Sect. 2. Sec. 100. To acct. lies not as a receiver for the profits of

18 Jan. 89. Lams. for the act in Jan. 20 on contract. case

3 Leon. 24.

of Inft. excepted - 1 the King

Co. Dig. Sect. 2. Sec. 100.

If he bailiff he make a Deputy, & cannot have

18 Jan. 89. the act as the Deputy for want of privacy; but

18 Jan. 89.

18 Jan. 89. the bailiff he may.

Co. Dig. Sect. 2. Sec. 100.

The an. Inft. may be an ex. & liable for torts

18 Jan. 89.

18 Jan. 89.

18 Jan. 89.

18 Jan. 89.

18 Jan. 89.

yet if make bailiff he is not liable to acct. for

he cannot contract & is supposed incapable of

accounting -

18 Jan. 89.

18 Jan. 89.

18 Jan. 89.

18 Jan. 89.

18 Jan. 89.

If he who receives property of another to account

makes an express promise to acct. then acct. lies

pro. & it will lie on the implied contract, but

account lies only on the special not the implied

contract.

These acts in this case are recount.

But in this case it is pro. & it will lie on the implied contract, but

account lies only on the special not the implied

contract.

These acts in this case are recount.

But in this case it is pro. & it will lie on the implied contract, but

account lies only on the special not the implied

It is thought Holt's rule

is correct.

of other rule or deprive

him of a benefit of his travel into the

own south.

18 Jan. 89.

18 Jan. 89.

acts of acct. but confine himself to the damage he

assumes to be.

not only for a special but for a general

damage & it does not

lie in a subsequent action for the same.

Account

1 Dec. 20.

Does not the Law imply a promise? I do not think a good ground of acc^t.

Comm. Dig. Sect. 4.

If one by deed acknowledges that he has rec^d. profit to account off he has his election to bring acc^t of acc^t or

1 Mac. 19.

Mod. 118.

Cy. 20.

Case D. 144.

10 Mod. 223. 225.

10 Mod. 497.

of simple con. & man.

titled and appear on of.

died and person is not merged.

Comm. Dig. Sect. 2.

debt or covenant on the deed. The taking of this security does not oust the Off of his actⁿ of acc^t for the object

if the security is to compel the party to acc^t and sum of for the same. If the security is to compel the party to acc^t and it is good for one and priority of another, or is a com-
pact of one and priority of another, or is a com-

promise of it, acc^t lies, not ass^t him, for the actⁿ is founded on priority of contract - must consider

u. In case of actual bailment, no such priority of contract as is required in acc^t.

In an actⁿ of acc^t if Off prevails there are always two judgements - first that debt^r acc^t good & that he render his reasonable accounts.

1 Mac. 99. 1 Mac. 21.

1 Mod. 42. 10 Mod. 92.

Comm. Dig. Sect. 2. 15.

Before whom the acc^t is had

11 Co. 40. A. 313. 11 Co.

1 Selw. Rep. 75.

Elem. 75.

computed - Auditors are then appointed by the Ct.

The auditors then make their report & final judgment is rendered upon it as on a verdict.

In law the Ct. award reasonable costs, for the service of the auditors. Paid by the party, in whose favour the judgment is, & put into the bill of costs.

The auditors make out their cost & is recovered in the final exchequer.

Hob. 27

2 W. 152. a. 50.

Account

193

If Deft. suffers a default before auditors the parties are of course right entitled to compel the other party to testify. Before the 1st meeting of the court there are two issues of fact. 1st. whether the Deft. is bound to account. 2nd. how far he is bound. The auditors will then answer. For this purpose what was done by the Deft. auditors have the authority of a Ct. of record except find a balance for either to give, fine is the criterion of a Ct. of record - party.

3 Mch. 1871. If Deft. refuses to attend before auditors or to produce his account, the auditors must award damages. 1st. to the whole demand. 2nd. to the appearance of Deft. or to produce his acc't. If Deft. does not appear that makes no provision for need of any provision.

If auditors find a balance in favour of Deft. in law they may award it & judgment goes for him to recover damages, as well as costs. (Not so in Civ. except in Ct. remb.) - In Eng auditors have no compulsory power, as in law. except in Ct. remb. as to what Deft. may plead under of the act, 2 Mch. 119. what he may plead before auditors, there is considerable contradiction.

Plea in Bar goes to the merits of the cause & is to be pleaded in Ct. before the judgment quod computat. What is called a general issue before auditors is that Deft. is not in arrears.

Account

Competent for Defot to plead to the actⁿ any thing
which shews that he is not bound to account. No plea in
Co. D. g. Acc^t E. 4. j. bar can be good, unless it shews that he is not bound to acc^t

Mom. 91. - It is a good plea therefore that he never was Bailiff
Bac. 20. - & so receiver if so sued - this is the g^ot issue
Woll ab. 121.

11 Noli. 129. 11 Bac. 85. Is on the same principle, a release of all actⁿ
11 Bac. 20. is a good plea in bar -

Is a release of the particular actⁿ is good - release
of all actⁿ is a release of the cause of actⁿ.

Is an award of arbitrators, that Defot. should be
acquitted is a good bar - because the award being a
legal one, operates as a release, & is equivalent to a
release in operation -

From 91-4. 11 Noli 110-15-22-30 Plea that Defot. rec^d the money to deliver to Pl.
120. 11 Bac. 850. 11 Noli. 115. & he has delivered it, is said to be good - In - I think
good for if true of. this not good, unless it involves a denial that he was
Defot. was never li-
able to under an ac- receiver & so considered by the Ct. & it does seem to involve
count. that denial - but then it is bad as amounting to the
g^ot issue - good in substance.

Then all go to shew that Defot. ought not to acc^t
If such plea is considered as admitting that Defot. was
once accountable, it is clearly bad - proper defence
before acc^tors -
- F - wide page, erroneously bound -

Debt

Leach. 30.

31st. 421.

That Debt, may not be put to the expense of bringing the debt by execⁿ, & to compel payment with^t execⁿ (sine). Therefore that the actⁿ will lie before a year & a day.

10 R 37.

This reasoning would not be conclusive to me if I had ^{not} found in a case decided in King's Bench in Hilary term. & Debt on judgment was bro't in Easter term - now the intervening time could not be more than three months.

In law, no time limited for taking execⁿ, therefore to bring Debt on judgment, after a year &c. there is no necessity an actⁿ of lapse of time, as in Eng. & it seems gen^{lly} agreed that in Law, Debt on judgment^t will not lie, while execⁿ can be taken out as matter of right & the full benefit of the judgment obtained by it. Here it would be vexatious to sue.

But on the other hand where execⁿ cannot be taken out as a matter of right, Debt on judgment will lie. before a year & a day. ^{using off. orig. ex. lre; ex. gr.} Justice is before whom he dies, or is removed ^{Stat. lre. 38.} before execⁿ. granted or satisfaction of judgment is made, ^{Stat. Comm. Action Civit.}

It may have Debt on judgment^t within 5 years: if the Debt does not exceed 100 it may be before another Justice alia before C. J. Gt.

So where great length of time being elapsed, C. J. will not grant ~~execⁿ~~ - Debt on judgment^t or sic fac. lies because then the Ct will not allow execⁿ as a matter of right.

Can.

Debt

205

I also where the full benefit of the Judgment cannot be obtained by taking exon, Debt on Judgment lies even tho Plff

Kimb. 311. 671 might have exon & right - ex. gr. If Defect in the original judgment.

is an absconding Debtor & Plff wishes to Factorize he may sue by force of foreign attachment.

So also if Judgment was rendered in another State where satisfaction

- Partion cannot be obtained & Defect has removed into this State.

Kimb. 177.

Debt on Judgment lies here on that Judgment rendered there because exon. there would not run into this State.

It also sends Debt on Judgment lies if exon. has been long unsatisfied where Plff wishes to obtain interest on his Judgment - on the footing of late allowed interest on liquidated sums according to the rule of the Com. Law has formerly - the defect in Imperfection is that no definite time is fixed within which exon. must be taken or barred.

2 Mac. 211. 78 R.

488. 3 Wils. 345.

8 Co. 142. note.

1 Root 176

An exoncom judgment will support this act. Debt on Judgment. For such a Judgment is available to all by direct or indirect force of law. Impover, till reversed, but a void judgment will not support Debt on it - it is a mere nullity - Every Sovereign State is to all others a sovereign State. By the constitution of the U.S. it is provided that full exon in each

held in Court State is to be given to all acts & records & to judgments in other uniformly of all States. No inquiry is made in this case into the original of records of another State or into the original of acts. In art. 4. sec. 1. Decided in New York by the State are just as conclusive as those that the original cause is examinable that he may then of over one State. then there was no cause of act in that State.

Dallas, 219. 211. 188. Baines, 460. 1. Jones, 426. Contra 2 Dallas, 302. P. Jones, 178. 15. 16. 121.

If actual notice was given to J. Deft. & me -

and is now conclusive in N. York.

Case of foreign Judgement, different. These are not records other wise not court com. But the exemplification proves the existence of decision.

S. Johns. 37. & the judgm^t is only prima facie evidence of a legal ob. & b. demands - If they were records they would be conclusive

evidence of a ground of actⁿ: Formerly hidden that debt has of some exist would not lie on a foreign Judgm^t, because it was not a record - To be proved like debt.

validity and effect of it has in N. York. Now settled, that Debt will lie on foreign Judgm^t, but as to the ground of actⁿ they are treated only as simple contracts, thus are examinable. 1st 2d 3d 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 32nd 33rd 34th 35th 36th 37th 38th 39th 40th 41st 42nd 43rd 44th 45th 46th 47th 48th 49th 50th 51st 52nd 53rd 54th 55th 56th 57th 58th 59th 60th 61st 62nd 63rd 64th 65th 66th 67th 68th 69th 70th 71st 72nd 73rd 74th 75th 76th 77th 78th 79th 80th 81st 82nd 83rd 84th 85th 86th 87th 88th 89th 90th 91st 92nd 93rd 94th 95th 96th 97th 98th 99th 100th 101st 102nd 103rd 104th 105th 106th 107th 108th 109th 110th 111st 112nd 113rd 114th 115th 116th 117th 118th 119th 120th 121st 122nd 123rd 124th 125th 126th 127th 128th 129th 130th 131st 132nd 133rd 134th 135th 136th 137th 138th 139th 140th 141st 142nd 143rd 144th 145th 146th 147th 148th 149th 150th 151st 152nd 153rd 154th 155th 156th 157th 158th 159th 160th 161st 162nd 163rd 164th 165th 166th 167th 168th 169th 170th 171st 172nd 173rd 174th 175th 176th 177th 178th 179th 180th 181st 182nd 183rd 184th 185th 186th 187th 188th 189th 190th 191st 192nd 193rd 194th 195th 196th 197th 198th 199th 200th 201st 202nd 203rd 204th 205th 206th 207th 208th 209th 210th 211st 212nd 213rd 214th 215th 216th 217th 218th 219th 220th 221st 222nd 223rd 224th 225th 226th 227th 228th 229th 230th 231st 232nd 233rd 234th 235th 236th 237th 238th 239th 240th 241st 242nd 243rd 244th 245th 246th 247th 248th 249th 250th 251st 252nd 253rd 254th 255th 256th 257th 258th 259th 260th 261st 262nd 263rd 264th 265th 266th 267th 268th 269th 270th 271st 272nd 273rd 274th 275th 276th 277th 278th 279th 280th 281st 282nd 283rd 284th 285th 286th 287th 288th 289th 290th 291st 292nd 293rd 294th 295th 296th 297th 298th 299th 300th 301st 302nd 303rd 304th 305th 306th 307th 308th 309th 310th 311st 312nd 313rd 314th 315th 316th 317th 318th 319th 320th 321st 322nd 323rd 324th 325th 326th 327th 328th 329th 330th 331st 332nd 333rd 334th 335th 336th 337th 338th 339th 340th 341st 342nd 343rd 344th 345th 346th 347th 348th 349th 350th 351st 352nd 353rd 354th 355th 356th 357th 358th 359th 360th 361st 362nd 363rd 364th 365th 366th 367th 368th 369th 370th 371st 372nd 373rd 374th 375th 376th 377th 378th 379th 380th 381st 382nd 383rd 384th 385th 386th 387th 388th 389th 390th 391st 392nd 393rd 394th 395th 396th 397th 398th 399th 400th 401st 402nd 403rd 404th 405th 406th 407th 408th 409th 410th 411st 412nd 413rd 414th 415th 416th 417th 418th 419th 420th 421st 422nd 423rd 424th 425th 426th 427th 428th 429th 430th 431st 432nd 433rd 434th 435th 436th 437th 438th 439th 440th 441st 442nd 443rd 444th 445th 446th 447th 448th 449th 450th 451st 452nd 453rd 454th 455th 456th 457th 458th 459th 460th 461st 462nd 463rd 464th 465th 466th 467th 468th 469th 470th 471st 472nd 473rd 474th 475th 476th 477th 478th 479th 480th 481st 482nd 483rd 484th 485th 486th 487th 488th 489th 490th 491st 492nd 493rd 494th 495th 496th 497th 498th 499th 500th 501st 502nd 503rd 504th 505th 506th 507th 508th 509th 510th 511st 512nd 513rd 514th 515th 516th 517th 518th 519th 520th 521st 522nd 523rd 524th 525th 526th 527th 528th 529th 530th 531st 532nd 533rd 534th 535th 536th 537th 538th 539th 540th 541st 542nd 543rd 544th 545th 546th 547th 548th 549th 550th 551st 552nd 553rd 554th 555th 556th 557th 558th 559th 560th 561st 562nd 563rd 564th 565th 566th 567th 568th 569th 570th 571st 572nd 573rd 574th 575th 576th 577th 578th 579th 580th 581st 582nd 583rd 584th 585th 586th 587th 588th 589th 590th 591st 592nd 593rd 594th 595th 596th 597th 598th 599th 600th 601st 602nd 603rd 604th 605th 606th 607th 608th 609th 610th 611st 612nd 613rd 614th 615th 616th 617th 618th 619th 620th 621st 622nd 623rd 624th 625th 626th 627th 628th 629th 630th 631st 632nd 633rd 634th 635th 636th 637th 638th 639th 640th 641st 642nd 643rd 644th 645th 646th 647th 648th 649th 650th 651st 652nd 653rd 654th 655th 656th 657th 658th 659th 660th 661st 662nd 663rd 664th 665th 666th 667th 668th 669th 670th 671st 672nd 673rd 674th 675th 676th 677th 678th 679th 680th 681st 682nd 683rd 684th 685th 686th 687th 688th 689th 690th 691st 692nd 693rd 694th 695th 696th 697th 698th 699th 700th 701st 702nd 703rd 704th 705th 706th 707th 708th 709th 710th 711st 712nd 713rd 714th 715th 716th 717th 718th 719th 720th 721st 722nd 723rd 724th 725th 726th 727th 728th 729th 730th 731st 732nd 733rd 734th 735th 736th 737th 738th 739th 740th 741st 742nd 743rd 744th 745th 746th 747th 748th 749th 750th 751st 752nd 753rd 754th 755th 756th 757th 758th 759th 760th 761st 762nd 763rd 764th 765th 766th 767th 768th 769th 770th 771st 772nd 773rd 774th 775th 776th 777th 778th 779th 780th 781st 782nd 783rd 784th 785th 786th 787th 788th 789th 790th 791st 792nd 793rd 794th 795th 796th 797th 798th 799th 800th 801st 802nd 803rd 804th 805th 806th 807th 808th 809th 810th 811st 812nd 813rd 814th 815th 816th 817th 818th 819th 820th 821st 822nd 823rd 824th 825th 826th 827th 828th 829th 830th 831st 832nd 833rd 834th 835th 836th 837th 838th 839th 840th 841st 842nd 843rd 844th 845th 846th 847th 848th 849th 850th 851st 852nd 853rd 854th 855th 856th 857th 858th 859th 860th 861st 862nd 863rd 864th 865th 866th 867th 868th 869th 870th 871st 872nd 873rd 874th 875th 876th 877th 878th 879th 880th 881st 882nd 883rd 884th 885th 886th 887th 888th 889th 890th 891st 892nd 893rd 894th 895th 896th 897th 898th 899th 900th 901st 902nd 903rd 904th 905th 906th 907th 908th 909th 910th 911st 912nd 913rd 914th 915th 916th 917th 918th 919th 920th 921st 922nd 923rd 924th 925th 926th 927th 928th 929th 930th 931st 932nd 933rd 934th 935th 936th 937th 938th 939th 940th 941st 942nd 943rd 944th 945th 946th 947th 948th 949th 950th 951st 952nd 953rd 954th 955th 956th 957th 958th 959th 960th 961st 962nd 963rd 964th 965th 966th 967th 968th 969th 970th 971st 972nd 973rd 974th 975th 976th 977th 978th 979th 980th 981st 982nd 983rd 984th 985th 986th 987th 988th 989th 990th 991st 992nd 993rd 994th 995th 996th 997th 998th 999th 1000th

And this record is for cause of actⁿ

only proper given: because the Judgm^t of a foreign Ct is examinable hence, only 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th, 101st, 102nd, 103rd, 104th, 105th, 106th, 107th, 108th, 109th, 110th, 111st, 112nd, 113rd, 114th, 115th, 116th, 117th, 118th, 119th, 120th, 121st, 122nd, 123rd, 124th, 125th, 126th, 127th, 128th, 129th, 130th, 131st, 132nd, 133rd, 134th, 135th, 136th, 137th, 138th, 139th, 140th, 141st, 142nd, 143rd, 144th, 145th, 146th, 147th, 148th, 149th, 150th, 151st, 152nd, 153rd, 154th, 155th, 156th, 157th, 158th, 159th, 160th, 161st, 162nd, 163rd, 164th, 165th, 166th, 167th, 168th, 169th, 170th, 171st, 172nd, 173rd, 174th, 175th, 176th, 177th, 178th, 179th, 180th, 181st, 182nd, 183rd, 184th, 185th, 186th, 187th, 188th, 189th, 190th, 191st, 192nd, 193rd, 194th, 195th, 196th, 197th, 198th, 199th, 200th, 201st, 202nd, 203rd, 204th, 205th, 206th, 207th, 208th, 209th, 210th, 211st, 212nd, 213rd, 214th, 215th, 216th, 217th, 218th, 219th, 220th, 221st, 222nd, 223rd, 224th, 225th, 226th, 227th, 228th, 229th, 230th, 231st, 232nd, 233rd, 234th, 235th, 236th, 237th, 238th, 239th, 240th, 241st, 242nd, 243rd, 244th, 245th, 246th, 247th, 248th, 249th, 250th, 251st, 252nd, 253rd, 254th, 255th, 256th, 257th, 258th, 259th, 260th, 261st, 262nd, 263rd, 264th, 265th, 266th, 267th, 268th, 269th, 270th, 271st, 272nd, 273rd, 274th, 275th, 276th, 277th, 278th, 279th, 280th, 281st, 282nd, 283rd, 284th, 285th, 286th, 287th, 288th, 289th, 290th, 291st, 292nd, 293rd, 294th, 295th, 296th, 297th, 298th, 299th, 300th, 301st, 302nd, 303rd, 304th, 305th, 306th, 307th, 308th, 309th, 310th, 311st, 312nd, 313rd, 314th, 315th, 316th, 317th, 318th, 319th, 320th, 321st, 322nd, 323rd, 324th, 325th, 326th, 327th, 328th, 329th, 330th, 331

Comp. 174-5.

Sept. 1955.

2 H. Bl. 410.

Conty. 1745. The Law of Foreign Commerce now punishable as matters
 Conty. 1745. of fact - B. Cont. 221.
 2 W. M. 410.

Before the present constitution our lts allowed defer-
ence to be given to the judgments rendered in other States, & held that a full cause
need not be given & yet they held also that the original cause of
actⁿ must appear in the Declaration — This latter opinion
is inconsistent with the former & with the Com. Law for the Com.
Law never requires the original cause of action to appear in the
declaration — I think therefore it is not Law that the original
cause of actⁿ must appear —

They treated such judgments therefore as less sacred
than foreign judgments as Ben Luv - It is placed on the
same footing with debt to Public Int is concerned with
debt on foreign judgments - Interest is allowed on such
judgments as well as precisely as on judgments on one a

1845. 430.

Ind. Supp. Budget under Line -

his only ^{one} example. It is P. that whenever indebtedness ~~at~~ ^{is} his, Debt will
Contract. Debt will s. it him for

also lie - not so in all cases - ex. gr. money paid by mistake -

2/20/00⁵ obtained by fraud - breach of trust sale of propy - converted

by a person not the owner. The rule is true & converso
as to similar contracts express or implied.

As to simple contracts express or implied.
 viz that where Gold has sent in debt as to the

ing that where salt lies, gently incl. app. lies, the more

universal - clearly not in case of frequency.

that y. l. are concurrent,

The rule is to be understood in genl. I concern of
express promises, & of those implied from transaction or
nature of act^s i.e. actual contract. e.g. Sale of goods with title

of new promise - But, I doubt 'as' concerned as service rendered with a
new promise - foreign judgment is not altogether like one of these cases
but seems to be so ~~affected~~ -

14. 2. 50.

Debt

Suppose Incidental act. will not lie in any to recover a penalty
has been decided that it would in Com.

Win. ab. Ct. vacat.

Judgment obtained by fraud in the judicial proceedings
is void ^{therefore} as to all - It is a nullity - The Fraud must
be in the proceeding in ~~the~~ suit - a judgment obtained by
subornation of perjury is not void - The Fraud here
meant in the proceedings is such a Fraud as deprives the
party of a day in Ct. - i.e. & has no opportunity of being
heard in Ct. - e.g. If the service is forged by the ~~Plff~~

483.

Deft. never having had notice. Is it irregularly obtained

3 Wils. 341. 2 Bl. R. 345.

1 Wm. 509. 2 Wils. 27. 2 Wm. 903.

4 Wm. 762. Rinkley vs.

7b. 7d. Linn. Plac. 544.

it may be void - non payment of duty in Com. is irregularity.

In Eng. process improperly filled up - Process not
returnable on a day certain - as at a town beyond
which he can bring a cause - Here the original
process is void, & so all proceedings upon it are void -
Is action that before a Ct. having no jurisdiction of
the subject matter.

In Com. on judgment obtained by foreign attachment
debt lies not agt. the absconding debtor himself, the
object being to draw prop^y out of the hands of the
garnishee: Judge Reeve thinks Debt will not lie in
In. I think debt will lie agt. the - But Deft. on a
common judgment may be lost by foreign attachment
stating that satisfaction of the judgment cannot be obtained
by execution - vide infra. But it is R. the object of the judgment is
to draw prop^y from garnishee - And if this is true & by sale the process
issue to take his goods &c. & for want to take his person -

Wils. 311. 481.

Gen. Stat. 496. 608. money secured by bond on single bill, the act!

2 Nov. 19. Ex. Dig. 198. Debt is the only com. law remedy Ex. Dig. 198.

7 Nov. 124. A bond to, payable yearly, i.e. no time, payment being fixed is payable on the day of the date. - Where

the condition was that the bond be void, if Defor. did not

or 139. Nov. 309. Pray, C.B. held nonpayment a breach - clear mistake construed by Ct. If a bond is given conditioned for performance of an agreement & collateral act, there is sometimes a remedy in to do yd. act in yd. condition. 2. Nov. 309. (Of which vice judge title it being released as an agreement to do the act. But the com. law remedy is in the act of debt for the penalty.

24 Nov. 318. In Debt on bond damages may be given exceeding

Nov. 49. 374. 132. 1/2 the penalty, in certain cases - e.g. If principal & interest of the debt, as appears on the instrument sum of

Nov. 49. 374. 132. 1/2 the penalty - This is given by way of damages - for the

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Nov. 49. 374. 132. 1/2 the penalty - This is given by way of damages - for the

Debt

2 Ack. 371. No. 593. of intention, arising from the face of the instrument
 2 W. 192 & 2 Ke. 528. In such a case an non performance of the act, to act
 1 Br. 624/8. — his for the honesty only, for the covenantee

And in such cases Debt lies ag^t an officer who has collected money
 consequent with and for a debt in ex^{pn}, in refusal or neglect to pay
 debt being assigned. it over - In denying or collecting the money implies
 a contract to pay it over in Law - This seems an
 exception to the rule that Debt lies not on a
 bond contract implied. But by the long, the Judge

2 H. Bl. 550.

2 Pac. 14. Robt 200.

See Sec. 514.

Thus one contracts to pay a certain sum of
 money at several days, debt can't be
 maintained until the last day to have
 1 Br. 192 G. 2 H. B. 304 for where one
 gives a promissory note payable by installments
 1 H. Bl. 587: where a person & the
 debt is on time & then between Debt
 & an annuity. But on a bond with penalty
 conditioned to pay several sums at eight days,
 & he has immediately on default of payment
 at either of the days, Debt. N. B. 108. 1. 56. & estimated in his return at a time sufficient to pay the Debt or
 or Debt 100.00 he had taken cognizant in the
 judge's remission. Dig. 100. 1. 103. 113.

In Court. Debt 200. y^d. against
 some day. is a debt at a certain
 on 2. 1000. 2. 1000. 113.
 2. 1000. 2. 1000. 113.
 2. 1000. 2. 1000. 113.
 2. 1000. 2. 1000. 113.

Debt is a personal debt, & the
 action in the latter is not a debt, in the
 former this is a debt & is sometimes convertible
 to personal or even the the Judge's by
 will do it or in some cases 2 Br. 359,
 100. 1. 103. 113.

debt is considered as transferred to the debt.

But debt will not lie for collateral articles
 levied on ex^{pn} & not sold for want of purchasers
~~pro defectum emptorum~~ In such a case one may
 obtain a writ of reconditioni expences & compel him
 to proceed in the sale -

But if he should return collateral articles, taken
 & estimated in his return at a time sufficient to pay the Debt or
 I should neglect to sell them it would seem that Debt lies
 upon ought to be exonerated. If however, does not
 cover the ex^{pn}, only as well settled.
 In Debt the parol contract, the Stat of Limitⁿ or ex^{pn}
 may be given in evidence under section of Debt Debt. But in
 Debt an bond on simple bill this plea is bad.

Now, that, bringing a new ag^t 1/4. to two years ex^{pn}
 only to the use of neglect - not to act to recover from
 him what he has received ex^{pn}.

Debt appropriate action for ex^{pn} But it will not lie ag^t
 Exp. Dig. 100. Litt. Limit at sufferance. ex^{pn}
 he may be proceeded ag^t in ex^{pn} to ex^{pn} in test.
 100. 1. 103. 113.

Debt

Evidence

If a bond has lain dormant for twenty years

A debt on or more with payment of any interest or any demand simple contract having been made or any circumstance to account for the any thing of acquiescence; this of itself is sufficient evidence of payment for the bond, shows of all of. If however it has been satisfied, & you defeat a verdict under plea of Debt is not solvent or claim.

bond to pay

This doctrine of 20 yrs. presumption was laid down by, at of. present. Le. Hale just as though it were merely a circumstance when a long time may be might presume payment. In this opinion he was followed by Le. G. J. in underhill that if a bond be of 20 yrs. standing & no demand proved thereon, no proof of payment, cause for a long forbearance shown on short evidence Le. Hale intended and debt should be paid (Mod. 22). This doctrine was afterwards adopted by Le. R. in in case of. present Le. R. 24 & in 3 P. Wms 396-7 & in times.

In 1 Brown 434 Le. Mansf. said that there was not any express any special indirect limitation of time when a bond should be presumed to have been satisfied. The question was about 20 yrs, but he had known Le. R. he given in evidence clear it to a long one 18 yrs. & in Case 109 Le. Mansf. said there was not any stat. limit to a bond, but a time when a long might presume payment; as where Le. R. was not paid for 18 yrs. but if proved that the party was not in solvent circumstances, or a recent acknowledgment of the debt, then the long must say the contrary. So too in 1 S.R. 272 Le. M. said there was a distinction between length of time as a bar & where it was only evidence of it. The former was positive, the latter only presumptive; & that he believed in the case of a bond no positive time had been expressly laid down by the Ct. that it might be 18 or 19 yrs. Altho these remarks of Le. M. may seem to imply that a long period of time than 20 yrs. is itself sufficient to raise a presumption of payment, yet in 1 S.R. 272 in the decision of which Le. R. concurred such doctrine can't be fairly inferred. This meaning therefore must be that where the time falls short of 20 yrs. the evidence will be required to raise a presumption of payment: such as having settled on a p. in the mean time, with having noticed this debt to the slightest evidence will be sufficient - but where the bond had stood 19 yrs. & a half with any demand the circumstance alone was held sufficient for presumption of payment. 1 S.R. 270 in

Debt.

It. 572.

If Int. has been paid after the day appointed for the payment, the presumption of the bond having been paid is rebutted - in this case the plea should have been discharge

L. R. 1870.
H. 827. 1. 2.
3/4. C. 16. 187. 2.

A Rec^t for Int. within 20 yrs. endorsed on the bond by the obligee, (the time when such rec^t was written & signed did not appear otherwise than by the endorsement) may be given in evidence to rebut the presumption in his case however there had not been a lapse of 20 yrs. from the day of payment mentioned in the condition to the date of the endorsement. In H. 827. L. R. 1870. to rebut the endorsement of a rec^t of part of the bond, after the presumption has been placed to be given in evidence, saying that this case differed from that in L. R. 1870. where the endorsement appeared to be made before it could be thought necessary to be made use of to rebut the presumption.

Release

In Debt upon Bond Debt may plead a release given after the bond - If there are two or more obligees a release by one is good to all. 2 Bro. ab. 40. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Where the release is fraud see the form of the release in 770. 874 m. (L.) - In 11 Bro. S. 447. where obligee after assigning a note & bond, took a release from obligee; L. R. 1870. 48.

A release not a release will not operate as a release in its own nature, but only to avoid circuity of action. 8 Bro. 188. 1. Hence if obligee consent not to sue one of two joint obligors, but the court may be pleaded in bar, L. may still sue the other obligor. L. R. 1870. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Sett off In pleading this, uncertain damages, or an unliquidated demand can't be offered. 5 Bro. 48. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

A debt owed by A to B can't be set off by C. 11 Bro. 262. for the remedy by way of set off may be intended to supersede the necessity of even actions. A debt owed by A to B can't be recovered in any action. If such debt be pleaded off, may reply that limit. If given in evidence on notice of set off, it may be objected to at the trial. 11 Bro. 180. The debts sued for & those to be set off must be in the same right & contractual. 11 Bro. 127.

A debt due to a person in right of his wife can't be set off in an action against him on his own bond. 11 Bro. 127.

Account

Co. Dig. §. 12. If Bailiff is not an insurer as to any thing shown
 your seasonable care and diligence.
 Bailiff is allowed that the goods were perishable & have perished in good accounting
 it, in accounting, his
 his own reason - before auditors -
 able expenses & charges. "Sulley accounts" is always contrary to the purpose -
 9. it is shown ^{that he is an} auditor. "Sulley accounts" is always contrary to the purpose -
 express stipulation. Law, single magistrates, or Justice cannot appoint
 and of auditors decide, he takes the account himself -
 Bailiff in his own wrong is
 allowed nothing for his time the report is returned to the Ct. final judgment
 expenses nor must he be
 excused by accident. ^{is awarded for the sum awarded} & in law the fact of the
 as disburse of one defendant.
 is obliged to pay for itself. Auditors are a part of the bill of costs; but are to be paid
 and what he receives the underlying of the report. by the successful party
 ably might have made.
 1. Law. 289. Co. Dig. In law auditors are not appointed in act - before
 Sect. E. 13.

single minister of the Law - He takes the acct. himself.
 Stat. does not authorize him to appoint auditors

Can. Stat. 97 In act of Book Debt for more than 50% that may
 appoint auditors & proceed as in act of acct. and can
 without of consent of parties.
 Stat. 97. Can. rule of practice that no appeal from a judgment
 given in act of to take 'do' on the award of auditors in law.
 In Eng. the act of acct. not much in use, the court
 as a bill
 remedy is in Chy.

Mac. 18 April 1837. Law in let. of Law, in Eng. Piff is not entitled to a
 381. 2. 1849. ^{enclosure} Book, papers &c. nor to Depot. oath. Mac. 228.
 Water. Partshp. of. Dep't. it is true in entitled to his own oath.
 228. Can. Stat. Law given auditors virtually all the

When you is no Chy.
 Jurisdiction of. Power of Chy in this respect. If Dep't. does not produce
 action must be in expansive use, Books &c. Piff's whole claim is allowed - obliged to testify &
 that does not compel Piff to produce his books &c. but
 if he does not every presumption must operate against him -

Account

If either party is dissatisfied with the award

cc Mac. 21.

J. L. trustee of y^e. In may apply for relief to the Ct. after it is returned
Ct. will not go into ^{in Connecticut,}
y^e. merits of y^e. report. The Report is set aside, of auditors exceed their
It must be for some
plain reason, ^{as for instance} commission, or make a set off or mistake on

their own principles, as in figuring which
appears upon y^e. face of y^e. report or from y^e. tes-
timony of y^e. auditors. In some objections to the report are by way
of generalities.

And so in case of of remonstrance in writing the Ct. will not generally
such behavior, corrup-
tion, fraud &c. enquire into the facts: but for mistakes in Law

appearing on the face of or from the proceedings

Kitt 35-29

Rev. 197. 20th-8, examines in Ct. report set aside & new auditors
413. 1 Day, 116.

appointed

Louis -

(A.)

For an action of debt certainly lies in cases where
y^e. cont. is merely implied.

A. sells goods to B. at a fixed price without any
express cont. ~~debt~~ to pay, debt certainly lies.
4 Co. 94. A. & B.

Action of Debt

199

Debt lies not in common law but in acceptance
of Bill of Exchange. 20 Nov. 1775.
And the obligation Debt lies sum of money due by certain & express contract.
11th. 25. Sec. p. 201.

The legal acceptance of the word "Debt" is a

(Quite as to the words "express", tho the usual definition)

2 Bosh. 78.

3 B. 154. ex. gr. a bond for a determinate sum, note ^{*} special

Exp. 172. bargain is the sum of money due is a Debt (bargain)

11th. 25. Sec. p. 201. for a sum capable of being ascertained generally
as to pay of amt. of it certain set good custom red. d. p. test.
9th. is suff. to determine if one performs service for another, the sum stipulated
to make it a debt. is a Debt or even without any agreement as to the sum,
a certain bond.

act lies

upon legal obligation

act of debt lies, in some cases on contracts

11th. 206.

12th. N. C. 187. Com. 13. Debt implied (parol) but not I presume, on parol

contracts implied ex. gr. If I sell goods & agree

4 B. 94. ^{act.} by parol for a fixed price, debt lies. 11th. 206.

Exp. 176. of Debt in the Com. Law remedy for goods sold &

3 B. 155.

11th. 206.

11th. 206.

2 B. 13. by Ed. Loughborough & so by Ed. in anfield. act.

of Debt on a mere verbal contract gone much into disuse

3 B. 155. 6 Debt on simple contract disused in Eng. by reason

11th. 206.

11th. 206. 1. of the wager of Law. Debt on simple contract reduced

11th. 206.

to writing not so much ^{now in some measure re-}disused -

9th. is now disused.

Defence swearing that he owes nothing & twelve
men, called compurgators swearing that they believe him.

11th. 206. which is the wager of Law is equivalent to a

verdict for Debt. This is abolished in New York by Statute.

Debt

3 M. 45. Dy. 24. 2. Because the whole sum demanded must be recovered
 3 M. 45. 2 de R. 221. if any; according to the old rule of the Com. Law
 1 H. 1. 107. - this rule not now observed. + H. 1. 249. 550. 12. Mod. 72. Dy. 6.
 2 H. 1. 107. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

1 H. 1. 249. 550. 12. Mod. 72. Dy. 6. Lately revised, as to simple contracts reduced to writing.

But it does not appear to be very frequent.

The Debt will genly. lie on a simple contract reduced to writing to recover a sum ascertained, yet in some cases, debt lies not on express simple contracts: e.g. agt an est. or admr. as such; - For Testator might have waged his Law: but Ex: n. cannot. This reason however does not now exist, for no third person can from his own knowledge swear that another does not owe a debt: in N. York usage of Law is abolished by stat.

Howd. 182.

1 Lev. 200.

Chitty, 249.

Exp. 1772.

J. Geo. 87.

Geo. 6. 1350. 187.

Bills. Ch. 7. 221. 10 mod 38. Decided that debt lies on a promissory note agt.

Howd. 182. Pl. 630. the maker & Indorser? Ch. 7. 221. 10 mod 373. Bills. 123. Exp. 1772.

Bayl. 94. n. c. Exp. 173. The indorser of the note is a mere warrantor. In many Books at Com. Law, a promissory note is a simple contract yet debt is always countenanced as only evidence of the verbal agreement, upon which current with Assumpsit is founded. In Eng. I think debt will not lie verallly of. case. on a promissory note. In Com. it will.

If one expressly promises to pay a sum certain for profit, delivered to his own use, or for services rendered to himself, or for his benefit, debt lies at Com. Law. Locas genly. if he promises for another to pay a certain sum. Case of an Attorney -

Howd. 1826. Ch. 7. 221. Dy. 21. Promise on his relinquishes by Bill.

Debt.

201

on an orig^l promise verbally to pay the debt of another - within the promise Debt
 lies ag^t if promisee of funds &c. should lie in waiting - Debt will not lie
 not on a collateral promise it will yet if he so promises on good consideration, he is bound
 Debt.

at Com. Law & Debt lies -

Esq. 173. Geo. C. 107. 40. 193. Here there must be a special act. ^{of Assumpsit.} on the case

482.
 L.R. 342. Debt will lie where the person for whose use he, is
 never liable. But if the original liability was ag^t
 the party so promising; e.g. Let J. L. give goods & chase
 them to me, or deliver goods to J. on my acct. But
 if the promise is not original, Debt will not lie -

Mont. 153. 12 and 245. Co Debt lies not for payee ag^t acceptor of a
 1743. Bill of exchange - he is rather in nature of a surety
 L.R. 23. as a guarantee of the drawer's Debt to the payee. Drawer
 is the Debtor & liable in Debt with J. payee.
 1743. 597. Receipts notwithstanding, to J. drawer says nothing to do
 244. Chitry thinks debt will lie ag^t payee ag^t the acceptor
 of a bill of exchange - on principle I think it will not.

At. C. 119. Ex. 24. Rule of Com. Law that P^l in debt must recover

34. 155. The sum declared for, or nothing. This
 of cont. must indeed be alleged truly.

2 Bl.R. 126. rule is not now observed - 'tis abrogated in case of
 an assumpsit for a trial.

Dougl. 570. 4. n. Debt on simple contract. 14. M. 249. 550.

Debt will lie for J. value though no price Debt lies in some cases on implied contracts to
 pay for J. 1 M. 24. 550. & 130. 13.

Chitry, 240. pay a sum certain & I think to pay a sum uncertain
 240. e.g. ag^t a J. who has collected one upon my
 2 Mac. 14. money. - for this may be made certain. 240. 240. 240. 240.

Debt

* Debt does not lie in such case in the name of the court informer, unless the Statute expressly authorizes him to sue 5 Inst. 313. 15. 2 Str. 828.

When this court informs of it will not lie.

6 Inst. 382⁹ Bac. 14.

1 Roll. 598.

4 R. 756. 7 do. 289. n. 7.

2 do. 202. 9 do. 448. 10 do. 382.

Kin. 149. 1 Root.

you is also an action called action upon of Statute.

Carth. 361.

1 T. R. 482.

2 R. R. 1800.

2 Mac. 14. H. 6. 206.

1 Roll. 598. 1 M. 485.

and sometimes when there is nothing like a contract or p bargain or other commercial transaction from which to

imply a contract, Debt will lie: ~~ex. gr.~~ on a penal Stat.

debt will lie to recover the penalty, where the penalty is certain

there being no specific mode of recovering the penalty prescribed[†]. This is a common practice in Eng. & here - It is a

civil act. in all its incidents, tho' not in its consequences.

This is the proper & appropriate act., tho' before act. h. tho' the Pff. is an entire stranger - The reason is that every member of the community impliedly promises to pay all fines imposed on him & in the manner prescribed -

To Debt on a penal Stat. Not quiter is a good plea. Lest the action, in point of form; ie on special demand, nil debt is a good plea to debt - not good to debt on specialty - (In Com. all civil act. h. before C. J. but if the penalty is above \$70 are appealable - see with criminal case.)

This debt lies not to recover damages, yet after damages are recovered in any act. debt lies on the judgment. For then the demand is by the judgment made certain ex. gr. Recovery in Exec. Debt lies on that judgment. The judgment turns what was originally damages into Debt.

Is upon an award of arbitrators to pay a sum certain Debt lies - The award ascertains the damages in the nature of a judgment. & debt lies - See page 203.

vide the number of the page - erroneously bound -

Action of Detinue.

211.

This lies for the recovery of a ^{personal} specific chattel in ^{possession} ~~possession~~ of
 3 Mo. 152. a bill in Ch^y. Tindal's is for the specific restitution of the
 Co. Dec. 287.
 1 Inst. 296. thing detained conditionally viz, that specific restitution

be made, & if it cannot be had, Defor. pay the value & damage.

4th action is founded not on
 of detention. tort but on contract express or implied

2 Bac. 11 { Debt and detinue may be joined in one l. on
 Title, Pleading { lies to recover any ~~thing~~ which can be identified,
 & those only: It lies not for money, even & unless in a book

describing it. The reason of this rule is, that the primary object

of the actⁿ is to obtain a specific restitution, & if it cannot be
 1 Roll 608. identified, it cannot be restored. money may sometimes

Co. 3. T. Detinue D. It lies for a piece of gold, ^{money may sometimes}
 Co. C. 157. - be recovered when con-
 1 Inst. 288. It lies not for 20^s in money. tained in a box, bag &c.

It lies in those cases only in which the Defor obtains
 Co. 3. T. Det. D. 11. of the thing lawfully, as by delivery or finding: If obtained
 1 Roll. 607. unlawfully, trosp. lies. 2d quere - vide 1 T. 2. 119. 21.

3d. H. C. L. 67. The actⁿ seems founded on contract express or implied.
 4 Bac. 11. 1 da 28.
 3 Inst. 126. + Debt + detinue may be joined in two counts in one declaration.

Detinue is, to a specific chattel where Debt is for money, i.e. both
 intend the same thing, & the qualifications of each in the same point
 or by actⁿ obtained by a tortious

2 Mac. 447. Detinue will not lie for money lent upon any description for it not to be
 1 Roll. 606. as even when 10^s lent for 4^s purposed of conversion.
 specifically restored. It is a mistake to be restored in specie, tho' not identically.

Co. Dig. Detinue, D. Where lies in all cases in which detinue lies. rule holds not ^{in cases} ~~in cases~~

* See qu. vide 16 H. 4. for ^{detinue} ~~detinue~~ lies not where the taking was tortious. The reason why
 on 16 H. 4. 20. Detinue lies not where the taking was tortious seems to be that
 originally a tortious taking was considered as converting the owner
 of his property. This reason applies equally well in case of trover.

Delinuc. 4c

Pro. H. Dec. pl. 30. — And in Leticia P. P. must have the ^{the not the power,} ~~propy~~ of the thing demanded.

The true reason why Detinue lies not in case of a portion, taking
 from D. Y. Det. D.
 1 Ch. 110 & 121-2, is because detinue does not lie for a part, but is founded on

Replevin 11 P. 2. Contract, express or implied

the value of original M^{ss}. act. has been diminished by reason of the swag of Lew
taking new to the ex. But the swag of Lew is not absolute. Considerable M^{ss} Lew. and swag. 1844-1849, 1849-1850

Had taken the place of it under the Equity of the Nat. Bank & will then do so.

Notice & Request

to Com. R. I.

Page 224

Conn. B. M. & Co. Salt 308.

$12 \text{ mod } 92$. Chy $\frac{13}{32}$ mod 38

Les. Eliz. 798.

Attest. I am a request ^{with} ^{the} ^{actual} or ^{fictitious} ^{the} ^{is} ^{always} ^{necessary}

[illegible]

14 Inst. 500. 16 56. 1100. is far between the parties confined to Offr's knowledge, & must
Campb. L.S.

Li. P. 1124.

From L. Comd:

Pro. Loc. 432.

1 Roll. 453. b.

Band. 42.

0 Kiss

Notice may

nd +ⁿ place

by 1841
by 1841

+

Sum 176. 22.

Geo. Jan. 57. 4

Leon. 53. No. 8. 249.

Dr. J. Kötter, A. d.

etch, 158.

Roll. 462. l. 45

103.238 40

Sept. 28. (Bulo. 4)

6. 1. 8. 1.

Request.

yale. 76.

a special request is necessary - new not traversable.

Co. Cas. 385. 188. 88.

186. 33. n. 200.

3. 200.

Litel 93. 209.

no. 6. 74.

3. 200.

It is ~~not~~ actual request is not necessary, where
 the debt or duty is predecessor to the contract (or independent
 of it, & the promise is in which is - the the promise is to do
 on request, for here the request is no part of the consideration.

it is not the cause of the act -

A. promise to reimburse

B. for all money paid

for his debts, both

before & request are

necessary. 3. 200.

Com. 18. 88.

in promise of 1/2. express

agreed. 1. 32. 33.

Melo. 66. 3. 200.

2. 200.

Com. 18. 88.

Com. 18. 88.

5 do. 52. Co. 1. 183.

the last rule must be understood of those cases in which
 the express contract does not vary the duty already existing -
 for the subsequent contract may be to do a collateral thing

request is (at supra) - Of the River (at supra) Road

promised to deliver a load of wheat on request, request must

be special - So promise to pay stranger's debt on request -

you in the last case the right of act. is founded on

the promise & request, (there being no antecedent duty.)

Special request must be alleged. ex. gr. promise to pay

on request such sums as the entertainment of 1000 & others

should amount to.

in Court to repair & cross find timber - Lessee

must make demand of timber

Com. 52. Co. 1. 183.

Litel 231. no. 6. 85.

Where special request is necessary, time & place

must be alleged, it being traversable - But where

the special request is not traversable, time & place

need not be averred - Les. does not ^{apply} this rule applies to

cases in which the question involves a denial of the

request, or the allegation is not then traversable

Specialty? - e.g. Prob. 'act' on a Bill of Exchange

Request.

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Books of Entries. apt. indorse, "of which Defdt. has had notice," suff. =

Lo upon a promise to pay, ^{on request} upon condition that do.

Geo. B. 85. does not pay, ~~upon request~~, a special request to L. I.
must be avowed.

1 Pound. 32. Want of an avowment of special request or of
5 Geo. 52. B. 6. 17. and incurable is
3 Pult. 299. notice, when necessary, is a radical defect & not
Geo. B. 183. 523. ^{incur} these special request is ne-
Geo. B. 74. 85. aided by verdict. 5 Geo. B. 409. cessary and is avowed it is
2 Roll. R. 62. ^{incur} "altho' often requests" is sufficient time & place are omitted.
3 Leon. 47 = ^{incur} the promise to pay the debt of a change in upon
Ray, 183. contra, not ^{incur} Law.

3 Talk. 208. request special request must be alleged no antecedent
duty & the request is part of the agreement of the debt -

Palm. 389. Talk. 308. Where a special request is necessary the avowment

Geo. B. 74 - specially is inevitable - occurs when not necessary -

When the question includes a denial of the special request it is not traversable; occurs, it is.

Genl. rule; When there is a contract to do any thing,

"on demand," & Defdt. cannot discharge himself by tender
with request; special request is necessary - e.g. Mercat
engages to deliver such a second in goods at his store

2, I suppose if Mercat. engages to deliver such a second
in goods at a time fixed; for he cannot select the

2 Talk. 988.

Allen, 25. goods - Where the selection is to be by a stranger, Defdt.
must apply to L. I. to induce him to select - But where

6 Geo. 30.

Geo. B. 208. 6.

Geo. B. 798.

He can discharge himself by tender, special demand is not
genl. necessary the the agreement were to pay to "on demand"

The two last rules so far as they interfere with the
particular ones before laid down, are subordinate -

Request

If one accepts a bill of Exchange to be paid by his banker, at the latter's store, presentment of the bill at the place for payment is prima facie necessary to give the holder an act of the acceptor or indorser. Locus, if the acceptor

Ch. 134. St. 1195. can be proved to have had no effect in the
May 4 78 — banker's hands — no need of proving a presentment.

^{Thos.} In self for benefit of one who had agreed to purchase Land, it was
 objected that St. 1195 has stated in his declaration only that he was
 ready & willing but had not shown what title. It was held by the Ct
 that he should have set forth his title. See also remarks by
Lord Ellenborough 6 East R. 561.2.

2 R. 580
Com. R. 116.

2 Salk. 823.

12 Mod. 529.

5 East. 107. 7 R. 125.

1 East. 203. 2 Bro. & C. 447. Doug. 684.

But where the precedent act to be done becomes impossible by the act of the party to whom it was to be done, a tender in Law is sufficient but the party thus tendering must show that he has done every thing in his power.

(See Lawrence in)
9 R. 373

Vol. 106.

1 W. 88.

Where there are mutual promises & the mere promise & not the performance is the consideration of the agreement (whether one promise be the consideration of another, or whether the performance & not the mere promise be the consideration, must be gathered from & depends entirely on the words & nature of the agreement) there an action may be maintained by either party, without averring performance of the agreement on his part.

18 R. 372.

In all the late decisions, however, according to Grose, the intention of the parties is the governing principle. Further on this subject vide 1 Lland. 320. Note 4. 2 do. 352. note 3. Willer. R. 157. Dunsf. note.

1 L. N. P. 100-4. 1 Title, Covenant

218

7 Ann. 79. 3 Salk. 443. Tre coo^t. 1 jointly and severally, of 8 coo^t in ten
343. 3 Bro. 197. Tith, may sue y^em jointly or severally. But two coo^t.
obli^g. jointly, y^e must be sued jointly.

3 T.R. 702. Yelv. 22. Three or more coo^t. 9 jointly and sever-
ally all may be sued together or each
or a sev^l action or one alone but two
or a less number y^e of. whole can not
be joined. Y^e coo^t. must be treated as at two
gather joint or as altogether several.
If y^e are two or more coo^t severalties or obliges,
all must join as Pffs.

2 T.R. 282. 2 Stra.
1146. 5 Co. 18. B.

Y^e rules are common to all contracts.
In y^e best case Def^t may plead non
joinder in abatement or pray op^r. of y^e.
coo^t. and demur to y^e. declaration.
And if que of y^e. coo^t in ten is dead
his Ex^{or}. can not join y^e. other as Pff.
Y^e. whole remedy survives to y^e. surviving
coo^t in ten. But if he recovers he must
account with y^e. representatives.
In case of joint and sev^l coo^t in ten, one of
y^e. coo^t in ten may in some cases sue
alone iⁿ others both must join.

6 Co. 112. 729.
1 East, 497. 1
B.N.P. 448.

5 Co. 10. 19. 8. Bull. If y^e. interest of y^e. coo^t in ten appears to be sev^l.
157. 158. 1. Second. 158. If such may sue severally as when one owes
2 Bro. 116. A.V.B. white ash to A. and black ash to B. and coo^t. 5 jointly
to repair y^e. may and ought to sue separately
or when one coo^t. to pay to A. & B. 100. to be
equally divided between them

Bro. 112. 729. 1
Chitty Plead.

And in coo^t in ten may declare on y^e. coo^t. as
if one were made to himself without naming y^e.
other though he may also declare upon exactly as it is

Stramp, 76. 819. 600.
892.

But y^e. interest
of one coo^t in ten
may sue jointly
with the others
as when one owes
black ash and
white ash jointly
and the other
y^e. coo^t in ten
3 Co. 10. 19. 8.
1 Bro. 116. A.V.B.
1 East, 497. 1
2 Bro. 116. A.V.B.
Y^e. coo^t in ten
may in some cases
sue jointly for y^e.
same thing y^e.
obliges the coo^t.
as to leave due
right of action
for y^e. coo^t in ten
in y^e. coo^t in ten
5 Co. 19. 8.

Covenant.

247.

Nature - Creation - Construction & Action.

1 Bac. 526. Pow. Covenants contracts & agreements are often
com. 244-5. used as synonymous

4 H. 3. 310. 145. Covenant is a contract written & sealed, it may
Exp. 266. be by indenture, or deed poll.

Gen. Plez 212. Tho by indenture, it suff^r to maintain the action.
Coh. 266. That covenants sealed, the covenantee did not.

Pr. 108. Bul. 167. It is the usual remedy at Law for damages, tho Lelt
3 Leo 129. will lie on covenant, where damages can be reduced to certainty.

1 Bac. 526. But where the covenant is to do something in three
1 Homb. 27. or to convey & execute deeds &c the most common remedy
139. 156. is by bill in Chancery.

1 Homb. 27. 139. If the matter of the bill shows a right to damages
2 Bu. 624. 241. on the cov^t only, it is not retained. For damages are not
10. 12. 1570. ascertainable by the Chancellor's conscience.

1 Bac. 526. But even in these cases (ie where the remedy is in
damages only) if the relief prayed is only consequential or
collateral to a ground of relief properly cognizable in Ch^y,
2 Bu. 624. 241. the bill will be retained - e.g. a matter of fraud mixed with
1 Reg. in ab. 1. the damages - a suer B on coven^t at Law to file a bill
1 Bac. 59. for an injunction on the ground of fraud, a file a cross
526. bill for relief on the covenant.

If there is no fraud Ch^y will direct an issue to ascertain
the damages - In law, the L^d will enquire into the damages
as if it to a committee.)

COVENANTS

Exp. 200.

L. Co. 83.

Covenants are either Covenants in deed or Covenants in law

The former are expressly mentioned & recited in the agreement between the parties -

Co. La. 384

Exp. 200.

The latter are raised or implied by Law. e.g. if A demise to B for a certain term the Law raises a 'covenant' that the Lessee shall enjoy quietly during the term. This division arises from the nature & form of the stipulation. Covenants are either Real or Personal: Real, which one binds himself to pass or assure things real, or Personal covenants

1 R. B. 313 Exp. 294

Co. Litt. 137.

Personal, when the covenant is annexed to the person, or concerns the person only - as to do an act or service to pay money - build a house &c. - This division is decided from a reference to the object of the contract

R. B. 125.

Co. B. 11.

Exp. 200.

No set form of words necessary to make a covenant any words shewing the concurrence of the parties in an agreement is suff^t - any words importing an agreement ex. g. If A lease to B "reserving such a rent" "B paying such a rent" & B accepts the lease. cov^t for non payment lies ag^t him - tho tho deed be poll & the words the revoc^t. This is a constructive covenant by Law, as B accepts the lease

1 Brev. 290.

Exp. 200, 1 Roll 56, 1 Brev. 297

Promiss. D. - cov^t 324, 1 Knt. 10.

1 Lev. 47, 2 mod. 88.

Co. Litt. 141, 2. Bro. B. 202.

384, 1 Com. Com. 244.

1 Don. 68, 275.

A covenant may be as to something past, present & future, ex. g. past, by which one covenant^t that he has done a thing; 2 if he has not covenant^t lies ag^t him present; or covenant^t of future; future, or coven^t of warranty, covenants of warranty &c

1 Brev. Com. 308

Covenant

Covenants in Law wide and differ from covenants in deed in this; covenants in deed are founded on the words used, as amounting to a coven^t express tho the words are not the most direct, apt or explicit, as e.g. "yielding & paying rent" "reserving, and" &c

Then as well as the words "cove^t agree^t" &c are verbal cove^ts, cove^ts expressed.

Corp. 267
4 Co. 80 b
5 do. 17f.
Leath. 98.
10 Rde. 519.
Ry. 257.
Palm. 388.
2 Mod. 92.

Covenants in Law are implied, not from the phrasing but from the nature of the contract or agree^t which is expressed from the express cove^t as e.g. "conceit demisiⁿ" import a cove^t in Law that Leas^r has a good title & if lease is evicted, cove^t lies aft^r lease. Ten. will not cove^t lie before eviction as on cove^t of reversion? Doubt. It will.

4 Co. 80. Bank. 98.
Rolls 520 pl. 4
Corp. 267-8.

But cove^ts in Law are restrainable by express cove^t as a lease by the word, "demise grant &c" which can^t to a cove^t that Leas^r has good title & that lease shall jointly enjoy^r followed by an express cove^t aft^r eviction by reversion, or any claiming under him: cove^t is not broken by a stranger's evicting

4 Co. 175.
Corp. 273.
4 Co. 80 b
Co. B. 675.
2 Mod. 92.

Leas^r by conceit of ad firmam tradidit, cove^t is said not to lie on the reversion for a stranger's entry. This must mean a tortious entry; not an entry under other title.

Corp. 268.
Co. B. 214

Compare last case cited with 4 Co. 80.

Covenant

Rep. 208
3 Hob. 465
1 Les 122.

A recital in a deed of a former agreement, creates a covenant on which an actⁿ will lie - ex. gr. Whereas it was agreed or, has been agreed that it should hay 3000 be the rec confirms the parol agreement or intent, by relation & makes an express covenant.

24/ 267. Roll 518
pl. 2-3.

But in covenants in deed, if the word covenant is not used, there must be words which import an agreement, or the actⁿ will not lie - ex. gr. Hence for years covenant to repair, provided & "it is agreed that Lesor shall permit timber." This is not only a qualificⁿ

- cation of Lesor's covenant, but a substantive covenant by Lesor - ^{ant} ~~with~~ the words "it is agreed" it would

2 Com. 256. then be only a condition precedent to Lesor's performance.

Lease to B for 20 years with proviso that if B dies within 20 years, his ex^r shall have the premises for so many years as remain. This proviso is a covenant not a lease - It is not in the nature of a demise or grant, but of an agreement & executory. Besides it is void as a lease for uncertainty, as to its beginning & length of continuance.

If Lesor or other party to a deed executes a bond conditioned for performance of all the covenants in the deed it extends as well to covenants in Law as to those in Deed ex. gr. "Codi et domini."

A lease provided & on condition that Lesor do such an act &c. is no covenant but a condition

2 Hen. 4th.
1 Roll. 518. pl. 4

Ho. 155.
Roll. ab 518
moore 478.

J.R. 27

4 Co. 80th

Covenant

to defeat the estate. So a release or stipulation in
 11 Ed. 2d is in nature of a disseisin, covenant does not lie
 at law

Construction of Covenants

To be construed liberally: i.e. the meaning of the
 clause 458 parties is to be sought, with such strict adherence to
 11 Ed. 2d 119 positive rules as in cases of deeds or grants executed
 11 Ed. 2d 119 conveying a present interest - Therefore in many
 11 Ed. 2d 119 instances a literal performance will not be sufficient
 11 Ed. 2d 119 to deliver a bond to B on such a day
 11 Ed. 2d 119 to being the obligor - If before the day I give B on
 11 Ed. 2d 119 the bond & thereafter deliver on the day, he is
 11 Ed. 2d 119 liable on the covenant

So on the other hand if one covenants that
 his son, being under the age of consent, shall
 marry covenantor's daughter, before he attains that
 11 Ed. 2d 119 age, & he does marry her & afterwards assents, there
 11 Ed. 2d 119 is no breach, tho it is strictly no marriage -
 Here there is not a literal performance; but
 it is substantially performed

11 Ed. 2d 119 I covenant to leave all the timber on the Land -
 11 Ed. 2d 119 cuts it down & leaves it there, it is a breach

I covenant to deliver a piece of cloth to B -
 11 Ed. 2d 119 cuts it into buttons & then delivers it at the day
 11 Ed. 2d 119 this is a breach - So where defect a former covenant
 11 Ed. 2d 119 that B shall have his grains & spails then

Covenant

Covenant to pay £80 money not mentioned - it has been
 gravely holden that delivering to the assignor's weight
 of a collateral article is no performance!

When the words are uncertain they are
 taken most strongly as 'covenantor' & most beneficially
 to covenantee: e.g. Defor covenanted if Plff would
 marry his daughter to pay him £40 Dan. holden
 payable for Plff's life.

When an exception in a lease amounts to covenant by
 lease & contra vide Bro. Clij. 557. 1 Roll. 431. 1 Bos. 531. Carth.
 232. Salk. 196. 11 mod. 170. 1 Bos. 238 n

Rule - where the lease is of a given subject, except of a
 certain part, the exception is not a covenant that Lessee
 will not occupy or disturb; e.g. of a manor, except such
 a close - less where the exception is of a thing or profit
 to be derived out of the thing demised, e.g. right of way -

Comp. n. - Bro. Elin. 140. 1. 57. Com. Dig. Monte E.
 Salk. 196. Carth. 232.
 Then is a difference between express & implied
 covenants, in the construction of them. The former are
 construed more strictly than the latter; e.g. If one
 expressly covenants by charter party to perform a
 voyage in a given time, he is guilty of a breach
 unless he performs, the performance was rendered

impossible by causes beyond his controul.

(An absolute covenant to pay rent for a house it is
 burnt down - covenantor must pay in all events.)

It is as reasonable that the lessor bear the loss as that the

2 R. 151.

1 Bos. 597.

1 Bos. 102.

1 R. 151.

Carth. 241.

2 R. 1.

The E.g. 7. E.g. this
 cannot be held.

3 Bos. 1640.
 Subler, 619.

3. S. 100. 1. 57.

2 N. R. 258.

3 Bos. 1637.
 2 East 233. 8 R. 259.

2 R. 151. 1. 57. 1. 57.

2 R. 147. 1. 57. 1. 57.

2 R. 147. 1. 57. 1. 57.

2 R. 147. 1. 57. 1. 57.

Covenant

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3 Bar. 1639. In case of implied covenants, such accidents
1 Doubl. 366a excuse the covenantor ex. gr. Waste in the Destruction.

(Dow. 259. ex. gr. House by tempest, enemies &c (A.)

See Annot. 1807. Gent. Rule: Performance of express covenants
Est. 240.

(A) If an act is that of a third party not discharged by any collateral matter.
Does not imply a contract. Exceptions to the rule that Covenantor is bound
as to inevitable accidents. Last example.
If in fact no gross breach of covenant at all events.
For saying that there is one covenant to do a thing, then lawful, a subsequent
difference of construction makes it unlawful. Covenantor is not bound

Exp. 240. The covenant is annulled. See under our constitution
Balk. 178.

art. 1 Sec. 10. Constitution does not interfere with the
Common Law & this allows such a regulation. This is not
within the constitution as to impairing the obligation
of contracts. Rule of the Common Law is then in full force.

(B) If one covenants not to do a thing which is lawful
at the time, & a subsequent Stat. compels him to do it.
The covenant is repeated. So, I suppose, if the act
was unlawful at the time of the covenanting ex. gr.
Covenant by indenture to serve ^{as} apprenticeship 10 years, &
the Law obliges all under 23 years to go into the army,
his duties to go & he is discharged.

But if he covenants not to do an act which was unlawful
Balk. 178. at the time, a subsequent Stat. making it merely lawful
but does not annul the covenant.

Sta. 1191.

12 Geo. 66.

1 Vent. 223.

322. 377

See or should be.

Gent. rule that covenants are confined in operation
respecting any particular subject matter which is in
being at the time of making the covenant ex. gr. Covenant by lease
to pay all taxes during the term extends only to such as
then or should be.

Covenant

were in being at the time of the execution of the covenants and not to those of another kind imposed afterwards -

Action of Covenant Breach

1. Broom 2425.
Comps. 190. 341.
10 Bro. Com. 114. 176.

a covenant contrary to Law or good policy is void - This is a rule applicable to all contracts. 3 S.R. 17.

2. Whether Equity can relieve Lessee (after the destruction of the thing leased) & having covenanted absolutely (viz. before to pay rent) - Point not decided - Chancellor's opinion was in favour of relief - Decision in favour of Lessee in 1773 by Lord Apsley - Subject discussed in 1 Pont. 387

87 R. 323 }
Point to be made if the giver
up the Lease is
"without insurance"
case see Johnson v. R. R. Co.
Russell on Mortgages. -

in 1773 by Lord Apsley - Subject discussed in 1 Pont. 387
again. Langbeque's opinion is against relief in Chy. His first

reason: Eqy cannot control Law, but merely administer relief from an attention to circumstances of which Ch of Law cannot take notice. Here it proceeds on the ground that the rule of Law was not framed for such a case.

2. When Equity is equal the Law must prevail. - W.G. thinks Pound's opinion is correct - Besides all the arguments on both sides take it for granted that to pay it at all events was the intention of the parties; but in question of construction & this is to be inferred from the coven't, i.e. the intention of the parties is to govern.

3. Where a person is charged to another & covenants that Lessee shall have the use of it for a certain term; & it becomes useless for want of repairs or is worn out during the term, the coven't is not broken - Holten contra by three Judges. Division turns on this, is it the duty of Lessor or Lessee to repair - If Lessor does, the coven't is broken -

Warr 58
Pont. 25. 111
1 Ed. 1123.
1 Lard. 324.

Covenant

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17 R. 28. 319. 20. age. Choke action are not negotiable at law. Law. yet
 Co. Lit. 214.
 Co. B. 280. They are often assigned & such assignment if by deed I suppose
 2 Roll. 45.
 447. 2. 3. 7. is an implied covenant by assignor that assignee shall have the
 Salk. 125. and that he will do it in order to prevent col-
 47169. - benefit of them. I have seen 317. 2 Ven. 540. 2 R. 110. 100. 1 mor. 113.
 location

2 R. 689. 1242. If then assignor receives the money due, or releases the

3 R. 304. assignor, assignor is liable on the covenant to the assignee

Foot. in one deed. Practice in law. is to sue the assignor for fraud (or tell
 can never be pleaded
 in law to an action. lately to petition in ch. of the obligor, he knowing the assignment
 on a covenant specially denies that a petition in this case lies not. act for
 neither deed unless
 it is in the non-fraud being sustainable against him also.

ten of a defeasance or release. 2 Vent. 217. 3 R. 305. 1 R. 2. 373.
 4 R. 680. 300. 523. 3 Salk. 298.
 8. 5. 6. 20. 300. 523. 3 Salk. 298.
 or even in writing. a promise in consideration of forbearance

1 R. 108. to pay to the assignee, will bind the obligor notwithstanding
 a release by the obligee.

least by creditors not to sue a Debtor & for a certain

Day. time, no bar to an act. but within that time. I But
 Co. B. 352.
 1 R. 46.
 1 R. 939.
 3 R. 41.
 1 R. 261.
 1 R. 939. 413.
 1 R. 10.
 1 R. 4. 639.
 2 R. 11. 12. 2.
 2 R. 8. 255. 2. 187.
 393. 413.

temporary release it would be a perpetual bar. for e-
 person's act. or right or extinguished
 once suspended is forever gone.

But if such a covenant makes a part of the instrument
 sued upon (as by a memorandum indorsed) it prevents a
 right of act till the time expires. This rule seems to
 apply only to person's act. for a temporary suspension of a right to
 really is not an extinguishment. for then, on graduation in
 92. 1. 8 R. 483.
 300. 623. 640. 737.
 3 Salk. 298. 1 R. 152. 2. 200.
 4 mor. 677.
 2 R. 16. 4.

the right to sealty.

Covenant

8 J.R. 170-1. 486. Mod. 23. But a Covenant by a Creditor not to sue at all
 2 Mod. 95. 200. 2 Root. 95. ^{though there are no words to that effect.} is a bar. It operates as a release, ^(I may be so pleased)
 Geo. 3. 352. 112. 446 - ~~is a bar.~~
 1 Roll. 939.
 The law regards the time when
 the debt may be enforced at
 the time of the release effect. For if the ~~debt~~ should recover, he would be
 to be paid R. 446. compellable to refund the whole

cost. not to sue a fellow) a covenant by one who has a legal claim that
 citizen in a foreign country is valid. He will not sue in a particular lot of proper jurisdiction
 is void - in his own country.

606. A Covenant by foreign Seamen with a foreign master
 24 M. 603. 177. of a foreign ship, not to sue the master in any other than
 Geo. R. 690. 11 mod. 254. their own country is a good bar to an action brought by
 Comm. R. 159. 2 Hall 298 the former of the latter here.

8 J.R. 168. 171. But a covenant not to sue at all, one of two joint
 24 R. 690. the cost is not considered as a release
 11 mod. 254. or several obligors, as no bar as to the other (now
 12 Jo. 551. if seems to the covenantee, see Geo. Suppose the
 But a release in form obligation joint only. I think the cost is here
 to one of two joint and amount to a release.
 Several debtors will discharge the debt is held up both, or as if one not
 change both. released by the covenant? Not settled.

If one grant to Debiton that he shall not be
 1 Roll. 939. 4 Trac. 266. sued before such a day, & if that he is, he may plead
 Bank. 64. 210. Bomb. 123. the grant as an acquittance & that the obligation
 Hall. 610. 2 Shov. 446. shall be void or that the debt shall be forfeited, it is
 1 Co. 46. 300. 350. - a conditional release or defeasance

For cases where Covenantee may notwithstanding sue in assumpsit
 vide 2 J.R. 479. 2 Bos & P. N.R. 78.

of Covenants and Conveyances

In all deeds of conveyance except quit claims,
Both of Sec. 80^b, whether or as g't are usually called release
of cco's. Ex 266 & there are two covenants 1. Seisin, i.e. that lessor has title
an in strict Roll. 517-20.

are in Brock Coll. 517-20.
2nd person Pl. 257. — 2 Warranty; i.e. in Eng. called for quiet enjoyment. It is
old C.L. 5 mod. 92. imply then coo. to make expressly
5 Co. 17. as does it convey "in a last clear deed or release
18. Cum. 49. Co. th. 98. excluded & it will derive from the lower —
50. 6 p. 1

So. 46. 1 Co. th. g. d. excluded
 ver. 811. 2 1/2 Co. m. 30 ft. a cover & as any little derived from the lower -
 Dan. 9. was Co. t. of Lavinia is a coo. de present.
 real coo. Sep. 279. ver. 856. Wm. Covert of main grantee may sue before
 a bill in mediation after the

170. glo. 60. and of grantor is liable immediately after the
 link 3. violation, it is sufficient to show that grantor was not under
 2 Co. 10 - delivery of the deed if he paid out the full
 value, or consent of warranty, he must be entered before
 170. glo. 60.

See Vol 2.
 Dec. 8. 47. He can see this is a covert ap^t. the claim of any
 Kirk 3. person whatsoever & is not broken till evi^otion -

In action on count of seisin it is sufficient to aver
Not Law 2 Root 44. that Defor. was not seisin in manner &c, with^t stating
con. G. the G. Lot, to have

who was seized. It is then incumbent on the G. L. to show
and he may put out good points
Res. 2. 369. 170. that he was seized in manner &c. ~~that~~ puts off. to
p. 60. - Give title,
p. 99. Show higher title in another.

at 8th time of conveyance
1. Shog. 10. Land in Wash. Govt of River is broken by an existing encumbrance
2. Map. Sept 1844.
433.47. 3 Wash 491. on the Land; unless it is excepted. The 17th. concern
- must allege & incumberance as specifically Shog. 10. nature of it.
for Govt of encumbrance, Shog. cannot sue till

Coof of Manj is a
 Co. do. 20. 30. 40.
 futuro. 4 Co. 20. 40.
 2 P.R. 817.
 2 P.R. 315.
 1 P.R. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Covenant

the true ground of the foregoing distinction must arise from construction, and from the relation of the person & his obligation not to vex or disturb as I conceive the Law, e. g. n. grantor included in covenant of warranty

Remedy. 242 Ejection by Lessee suspends the rent (focus of a more trespassing act.) By tenant does not.

1 Roll. R. 21. Ch. 302. Same rule where the tortious eviction is by any person included in the covenant of Reversion or n. p. n.

2 Com. 544. By 257. To even tho. Reversioner is not named in the covenant.

A covenant by Ex^{or} as such for quiet enjoyment of any persons whatever is restricted to themselves

Shut. Touch. & persons claiming under them; i.e. the breach must happen by some act of the Ex^{or} or n. p. n.

By 7. covt. only in the decision & how the rule of construction can be represented accurately and by genl. covt. they are distinguished in principle I cannot see can be considered as at-Rule of Damages on covenants of reversion & warranty. Swing only the tortious title, so that it may be diff. here & in Com. 2 as to the latter our rule diff. from

the English - as in q. Mapo. directly rule

1. From the time of paying interest. In Com. on covenant of reversion self recovers consideration or n. p. n. consideration money & interest upon it, on covenant trusts from the time that it was interest of warranty he recovers consideration & interest &

all his actual or special damages in being evicted yet in his covt. in defending his title and nothing for more or less. I find no such rule in the English books tho. I think it reasonable

10. for a covt. 2. Roll 294-40. In Com. on covenant of reversion it is self may recover consideration & interest. It should be so in covt. broken as soon as made. 2 All. 433-434. 3 All. 523-524. 465. 4 B. 1081. 4 Ch. 1. 526. 49. time of eviction & special damages consequent on the eviction -

Roll. R. 21.

Covenant

In cove^t of reisin, assignee of grantee cannot maintain an actⁿ ag^t first grantor - For the cove^t of reisin was broken at the moment of exor, & so the

Myler & v. Offner & ~~the~~ in Com.
L.S. 2nd Soc. Rep. 295.

Publ. 158-9. 18 Apr. 1.
2 Collap. 439. 21 Apr. 1.
Ex Dig. 295. 166. 116. 117.

5 Co. 15. B.

10 Id. 384. B.

Ch. 150. Plead. 116

3 Co. 22. 23. 5 Id. 116

471. 5 Id. 120.

right of actⁿ accrued before assignm^t & a right of action cannot be assigned - Secur in a cove^t of

warranty, for this runs with the land, and if assignee of fee may maintain an action ag^t either assignor or grantor if ejectm^t or disseisin is broken in him ag^t grantor

noted. This proceeding when the interest in question

is an immediate assignm^t who has not been dispossessed cannot maintain an action ag^t first grantor if grantee does not notify him and his warranty if he has but if on being notified, recover his whole damages demanded he can maintain his action. 1 Com^t of grantor, the he may recover the value of the land given. 244. 290

Cove^t of reisin.

If Lessee does not appear, lessor must defend as 2 Roll. 396. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

Peake's Co. 59.

The usual mode of giving this notice is by a

than action on cov^t of reisin & recovery called here a writ of recovery. reisin is a fact that he subsequently acquires title does not bar the recovery, but if he is concluded by the judgment ag^t the grantee, he must go in satisfaction if he is concluded in he is concluded in satisfaction of damages. 3 Co. 22. 23. 5 Id. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

vide Publ. 234

Covenant

Brins
Chitney 212.

2
to 219.

Geo. Sec. 505 under

131. 2 Kent 198.

1 Roll 112. Bonds 297.

2 Wils. 293. Black 108.

2 Wils. 293. Black 108.

2 Wils. 293. Black 108.

2 Wils. 293. Black 108.

2 Wils. 293. Black 108.

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2 Wils. 293. Black 108.

2 Wils. 293. Black 108.

A clause that on non-payment of any one installment

the whole shall be due immediately is good. See

Without such clause he recovers only the installment due.

Then P. may maintain cost for whole if P. thinks debt.

131. 2 Kent 198. On covenant any number of breaches may be

assigned - aliter at Law Law on penal bonds one.

2 Wils. 293. Black 108. Chasing a forfeiture of the whole - for if he assigns

more than one breach his replication will be bad

cover for nothing except

Then breaches which for the breach comes out in the replication is

to assign.

amounts to duplicity - Com. Sup. V. have exploded

the last rule for our use of Law will ~~not~~ change the

penalties of bonds - Does not the rule appear to be

relaxed in Eng. from expressions in 2 Wils. 293?

Now by Stat. 8 & 9 W. 3. P. may assign as many breaches

as he pleases in act^{ing} on bonds, for performance of covenants

17 ac. 544. 2 Wils. 297.

8 Wils. 459. 402. 297. 126.

17 ac. 544. 2 Wils. 297.

17 ac. 544. 2 Wils. 297.

17 ac. 544. 2 Wils. 297.

17 ac. 544. 2 Wils. 297.

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17 ac. 544. 2 Wils. 297.

Covenant

Use. 6. 553. Exception: where the covenant is to be performed by the
 1 Jac. 533. 1 Rep. 265. Testator personally; i.e. where the contract is fiduciary
 2 Com. 563. 11 Mod. 579-83. i.e. founded on a person's confidence.

2 Com. 563. To B is bound even in the last case, if
 covenant was broken in Covenantor's life time; i.e. they
 are liable for damages for the breach; but not specially
 to perform.

2 Vern. 213. To ancestor, executed in fee, may in Eng. bind
 his heir by covenant. e.g. he covenants to sell lands
 & dies before the conveyance. His heir being bound
 by covenant real, will be decreed in Chy. to convey &
 the money will genlly. go to the Ex; especially if the
personal property is insufficient for debts. This is a covenant real.
 2 Dyer. 338^e

Chy. 294. 2 N. B. 743. Genl. rule; that covenant real, binds the heir of
 2 Com. 561. But 158. the covenantor, & also descends to the heir of the
 200. 520. ^{But} bond. 42 w/ 4. covenantor & he is entitled to the benefit of it.

2 Com. 561. 2. Their may sue on the covenant tho. not
 2 Lev. 96. named, if the covenant runs with the land & appears
 200. 244-5. designed to continue after ancestor's death. a covenant
 200. 305. with power to leave the land in repair.

2 Com. 561. In Com. it has been holden that the heir as
 such, having assets by descent, is liable at Law, on
 ancestor's covenant of seisin as well as warranty. Per
 as to seisin. vide. Yelk. Reg. 14. Adm. 1. For distinction
 on the subject. That he is so liable at Com.
 Law there is no doubt.

Covenant

234

Booke 223 2d put such replication good is assignor continues in possession? Qu.

Doug. 435. So if he assign to a same covenant, his good title

3d. 224th Husband dissents. The assignee of the lease is liable

that all on the ground of priority of estate and not priority of contract

1st. 224th 3d. But Ch. will compel assignee to account

1st. 224th 3d. that is may apportion of rent if of

1st. 224th 3d. for the rent, while he enjoyed the land in this case

assignee assignee is not responsible.

i.e. where he assigns to a Tenant

2.

If assignee is evicted of part of the premises he is discharged from a portion of rent if

2d. 575. named, the rent may be apportioned and then

the contract with him being real. So in

debt of lease himself occurs in covenant

(this) The reason why debt lies for rent apportion

is on the ground of priority of estate & that

remains as to part not evicted - express

360. 224th

Covenant on contract must be enforced according

to the terms.

Li

Whether Ch. will under any circumstances

1st. 224th 3d.

2d. 219. 548.

restrain the assignee from assigning to a Tenant

or insolvent person? Qu. I think not no decision

on this point. They will not restrain if assignee

offer to surrender to lessor he will not accept

1st. 224th 3d.

2d. 219. 548.

3d. 219. 548.

4d. 219. 548.

5d. 219. 548.

6d. 219. 548.

Covenant by lessor not to assign is binding

tho. formerly doubted - Such covenant not broken by

lessee's condition taking the term in option. This is an

assignment by operation of law. The covenant of a voluntary

Covenant

assignment - Nor is such a cov^t broken by
 8 B. 59. 2 Bl. 276.
 237.
 14. 443. 3 Bl. 276. an under lease of part of the term (a cov^t not
 to assign, means the whole term) - Nor by demise
 of the term.

236.
 3 Co. 20. Popph. 120 & 1208. 100. during the term,
 The lessee is always liable to Lessor on the
 1 Co. 11. 91. 1 Co. 443. 1 Bl. 439. ^{himself} by express cov^t, even after assignment ^{by Lessor}
 1 Mac 595. 6. 1 Doubl. 355. 4 Bl. 199.

But if Lessor has accepted assignee for
 his rent, as by receiving rent of him, he
 cannot afterwards maintain debt, for rent of
 Lessee in any case. The priority of estate being gone.
 on which debt for rent is always founded.
 Tho. Lessor has accepted assignee for his rent
 yet if the cov^t be express, he may have an
 act. of cov^t broken in this case: for the
 priority of contract remains tho. the priority of estate
 is gone.

for rent
 But if cov^t is only implied by Law, Lessor shall
 not have any act., even act. of cov^t ag^t. Lessee for
 any failure after accepting the assignee, (tho. he then
wise may). Such cov^t being founded on priority
 of estate, ^{this, the} ~~which~~ Lessee alone cannot destroy.

He may accept the assignee by accepting rent,
 by assenting to the assignment &c, & in gen^l by
 any act which recognizes the assignee as tenant.
 either expressly or by implication.

Les. Les. 394.
 14. Bl. 444. 439 ^{any}.
 1 Doubl. 354. 3 Co. 22 ^{act}.

1 Doubl. 354. 1 Bl. 157.
 1 Co. 11. 91. 592. 1 Bl. 433.
 444. 2 Co. 563. 1 Co. 188.
 1 Bl. 102. 7. 1 Doubl. 257.

237.
 1 Bl. 439. n.
 1 Co. 11. 91. 592.
 1 Co. 447.
 1 Doubl. 354. 3 Co. 22.

1 Bl. 438. q. m.

Covenant

Covenants which run with the Land & covenants

In several actions where the covenants are of record, lessor may pursue his remedy or lessor, for he cannot sue them the covenants, agt Lessor & assignee, at the same time, but jointly.

only one action, shall be enforced. - After satisfaction of
Geo. Inc. 523, one action if Debt in the other is taken, except for costs
which he must pay.
Audita quarela lies.

By Stat. 32 Hen. 8. the assignee or grantor of Lessor has

the same remedy or covenants running with the Land agt.

4 Pas. 249. Lessor is as the Lessor himself had at Com. Law - Com. Law

Words 345. extended the remedy only to the representatives of Lessor
Geo. Litt. 215.

Graves. 522. or grantor By the same Stat. the remedy, has the same
3 Co. 92.

An assignee takes the remedy agt Lessor's grantor as he has at Com. Law agt Lessor agt.

remaining in trust of a derivative lessee or under Tert. rent is one who
tenant to of orig. takes a conveyance of part of the residue of the term
Doy. 174.

lessor. 3 Wils. 239. or one as Tert. to the Lessor who takes the whole
2 Bl. 957. & 958.

Residue of the term - no priority of covenants.
1 Wils. 316.

a derivative lessee is not liable on the covenants
Doy. 538. 174.

in the original lease at all. y^e is no priority of covenants
under Com. Law is a new tenancy. Lessor and Lender Tenant and of
and distinct a estate and Rules laid down as to assignees do not apply at all
with a transfer of y^e orig. covenants no priority of covenants.
to a derivative lessee, he holds as Tert. to lessee &
estate.

not as Tert. to Lessor -

W. old rule has always been taking in y^e form of an assignee
appeared to Doy. 438. It is the same rule as to mortgagee of the whole residue -
be correct. 1 H. Bl. 114. when L takes present. (tho he is liable to a distress for rent,
for y^e mortgage is not
considered as a in the ground of enjoyment) there is no priority of covenants
purchaser (East 500. in the former case. But a later Chancery or how de-
until he has foreclosed. 1 Wils. 255. 3 Br. Ch.
166. Abbot on Shipping. 19. 20. 1 Wils. 168. 12. 7 T. Rep. 306.

Covenant

¶ 105: 3 Mar. 1942. Difference between an assignment & an under lease.

An assignment is a sale of the ^{whole} ~~lease~~ interest, but an
under lease is the creation of a tenancy under ^{lease} ~~lease~~.

The former is sent to the original Lesson - the latter
is sent to the original Lesson to 4th Lesson

is sent to the original owner to be less or
 taking in capacity of Town
 And said Ex^r or Ad^r may, Assignees of the whole town are liable on
 in an action on g^d cov^{ts}
 be discharged and assignor covenant according to the preceding distinction
 see. June 1804 and I have the

22. 1st Feb. 4. Day. 1797. arg^s whether the assignment is actual, or by Devise,
Lulk. 309. Ep. Dig. 296. *note under* *except* *to* *transmission* *to* *an* *Ex. R*

1. 309. 2p. 1p. 96. sale under exec. or transmissive to an ex. or
or any other mode of transfer by operation of Law.
 If depends, I. think, on the question whether
 it can ever be ap- liable for the rent or any part of it. Not

577. Conf. 486. to be liable - Suppose the original lease becomes
620. Erie. 133..

involved. it is unreasonable that Lessor should
have no rent.

If Lence covenants for himself & assigns
as long as ^{he or} they shall be in power. & assignee
continues in power, after the expiration of the
term, he is liable on the covenant ^{as before} during the
time he holds; he is not strictly an assignee during
that time.

How far these Count^{ts} extend to & ag^t their &
Lin representatives. In an act on Count running
with the land of Lewis Lin, Infancy is not
pleadable in Am.

Leon 584.
Style, 40%.

4-12-77

Covenant

2 Com. 561.
1 Inst. 176. 247.
Esp. 275.
2 Lev. 26.
Bul. 158.

If A coven^t with B, Lⁱ heir & assigns for quiet enjoyment (even in a real coven^t as in the grant of an inheritance) & the coven^t is broken in B's life - his Ex^r the not named shall have the actⁿ & not Lⁱ heir tho he is named: for damages are to be recovered & they accrued in his life time & so belonged to his person^l fund. And grantee in case of coven^t of warranty being anted, could have no Lⁱ of the land. Hence the trustee of his person^l fund shall have the actⁿ; of course the actⁿ survives to him & not to the Lⁱ.

If coven^t real is broken after covenantor's death, Lⁱ heir & he only must have the action - a descent has been cast to the heir, tho the ancestor had no claim in actⁿ; not broken till after his death.

Gen^l Rule: Covenantor's Ex^r is, the not named always liable for a breach happening in covenantor's life even in coven^t real; for the right to damages accrued in Lⁱ life time, & would have diminished his person^l fund. It will lie also ag^t the Ex^r, tho not broken till after covenantor's death, unto & tho not named, if the coven^t is express -

2 Com. 563.
1 Roll. 519. 354.
Dy. 14.
Cro. 2. 553.
1 Sam. 1. 128.
2 S. 110. 111.
1 Dec. 137.

Covenant

Geo. 8. 553.
1 Bac. 533.

2 Dom. 563.
2 Ry. 257.
1 Bac. 533.
Geo. 8. 157.

Exp. 296.
Wils. 4.
Falk. 309.

2 Dom. 564.
Exp. 294. Latw. 287.
15 Mod. 357. Co. Lit. 384.
384. 70. 3. 204. R. 378.
3 Bac. 27.

(A.)
It is one by which
coven. stipulates to secure
or indemnify of coven.
from some loss or damage
apd.

Exp. 295. 301.
1 Roll 434. 460. 50.
Geo. 8. 443. 1 Mod 219.

10 Mod. 37. 1 Roll 434. 2 Lev. 37.
1 An. 400. Geo. 8. 212.

Exception to the last rule, of covenants terminated
with the life of covenantor i.e. to have the coven. of Duration

But on a coven. in Law in a lease or grant
not broken till after covenantor's death, Exp. is
not liable.

If Exp. to come into possession of a lease in
their representative capacity, they may be sued as
assignees, for breaches during their own possession.

Heir of covenantor is liable for breaches
accruing either before or after covenantor's death
if named, & if he has real assets, i.e. assets by
descent, seign. soc. If he has assets & is not named
he is not liable - so if named & has no assets.

In con. the act^s must be not genlly of Exp.'s
if at all. Heir as such not in genl^t liable on his
coven. tho it has been holden that he is
or indemnify of coven.
from some loss or damage
apd.
if broken by the ancestor during heir's time, seign.
on covenant of seisin. In as to seisin.

Covenants on Bonds to save harmless. (A.)
coven. to save harmless ^{does not insure ag. ^{td}} is not broken by the tortious
act of another - as in covenant for quiet enjoyment
e.g. agree to covenant with lessee & lessee's goods
are unlawfully distrained - seign. if it is particular of
the act of a particular person.

4th in y^e case where In certain cases a covenant to save Raimon is broken
y^e liability accrues by the mere liability, tho. no actual damage is sustained,
after y^e cov^t is made by y^e covenantor.

If a P^rss. takes a covenant or bond to save Jim Raimon
of the escape of one having the liberties of the prison
- yard, & the prisoner escapes, L^r may sue immedi-
- ately on the ground of liability, & need not wait till

1 Cro. P. 53. 123. sued himself - the damnification is ideal, & is only
1 Root 510-11. a constructive damage - Intended by the parties
that the escape of the prisoner should be a breach
of the covenant.

2 If a surety takes a counter bond of indemnity, &
the Debtor fails to discharge the debt for which the surety
is bound, according to the terms of it, the counter bond
is forfeited immediately; the condition is broken & the
surety may sue instantly on the mere liability.
1 Mod. 507. the Debtor failed to discharge the debt for which the surety
Publ. 234. is bound, according to the terms of it, the counter bond
Lalk. 198. is forfeited immediately; the condition is broken & the
5 Co. 24. 24. surety may sue instantly on the mere liability.
Comf. 525. 18 R. 590.
2 Co. 100. 640. Surety may sue instantly on the mere liability.
3 Co. 577. 4 do 714. The non paymt. of the bond when due is the event
5 Co. 529. Kibb 314. Covenanted of, & ergo, the bond is broken by the non paymt.

3 Will. 271. 347. Covenanted of, & ergo, the bond is broken by the non paymt.
1 term. 190. the party is not saved Raimon. L^r has once compelled
y^e debt^r to pay y^e debt, but y^e L^r seems no necessity for this.
2 Br. 156. the question is whether liability alone will give
1 Root 507. the surety a right of act, accrued both ways in Com-

If the principal has been compelled to pay the
surety on the latter's mere liability & has afterwards

2 L.R. 106-5. been obliged to pay the Debtor, Chancery will oblige the
surety to refund, except y^e cost and charges.
would not make it lie on the surety.

2 Brown 1005. 7 L.R. 287. As the surety has recovered by judgment of act^r - I should
think he ought to be allowed to object that the money has been paid
in both cases under a judgment of L^r this objection is substantial.

Covenant.

But, if one having obligated himself as surety for another takes a bond of indemnity or covenant to save harmless after his liability has attached, no right of actⁿ accrues till

Talk 196.

2 Wils. 234. r. 55.

Root 507-

5 Geo. 24.

Comp. 525.

2 S. R. 104-5

Comp. 525-7 182. 599.
3 Wils. 14.

When in co-sureties & one has taken a bond of indemnity, he cannot maintain an action against the other surety, but he is co-surety to contribute with him to the debt, & in an implied contract between co-sureties to contribute to the debt. 2 B. & P. 266, 270. 3 W. 235. P. 492. As if one is a surety for another, & the other is a surety for a third, the first is a surety for the third, & the second is a surety for the first. 2 B. & P. 266, 270. 3 W. 235. P. 492.

By illud. 263. h. 1000. When one surety is bound at the request of another surety, he is bound to contribute to the debt, & in an implied contract between co-sureties to contribute to the debt. 2 B. & P. 266, 270. 3 W. 235. P. 492.

Special or actual damnification; e.g. A. executes a single bill as surety & takes a bond of indemnity, or takes the same after condition broken. Otherwise it would be absurd. For the liability commences immediately, but a bond is given as a security ag^t future damage, & it is very clear, if he had executed a personal bond & taken a bond of indemnity before condition broken.

If surety takes no bond of indemnity & pays the debt of the principal, he may maintain indebit^{us} actⁿ for money paid laid out & seen unless he has paid the money - Formerly he could not maintain any actⁿ, even after he had paid the money - King. Jo. decided in favor. But in this case, mere

being sued and charged in liability does not give an actⁿ. If he has taken a bond of indemnity, he cannot maintain an action against the other surety, but he is co-surety to contribute with him to the debt, & in an implied contract between co-sureties to contribute to the debt. 2 B. & P. 266, 270. 3 W. 235. P. 492. As if one is a surety for another, & the other is a surety for a third, the first is a surety for the third, & the second is a surety for the first. 2 B. & P. 266, 270. 3 W. 235. P. 492.

Claims has elapsed, & is still liable. Stat. 32 Hen. 8. 14th would probably give relief to him.

There is a distinction between cases where no claim exists & covenantor has no power to create one, within the time limited & those in which he can, by his own act create a claim within the time: ex. gr. Where the contract allowed the covenantor to make a demand at any time during his life, the demand being precedent to a right of act, & he delayed the demand till the expiration of the time limited: Here the judgment was against covenantor. This is contrary to tenor of contract,

Reed.

Of the power of Covenantor over covenant after assignment.

In case of assignment of obligations to obligee may in some instances release after assignment; in other not - ^{expressed} Rule is - if the instrument is not negotiable & is assigned covenantor release is good even after assignment by the covenantor seen, not good - Law of Price of Exchange -

4 Bac. 279.

2 Lev. 206.

2 Bro. C. 503.

2 Lamer. 102.

1 Doubl. 545.

So if Covenor after assignment of reversion, releases to teneor, all covenants &c, yet the assignee of the reversion may recover for all breaches after assignment - For the covenant runs with the land & is assignable since Stat. 3 & Hen. 8. accordingly to some it was so at Common Law -

4 Bac. 279.

^{I have been told} That where a lease has been assigned by lease, the assignee of act. For

Exp. 108. Loo. 6261503.
2 Roll. 411. & Com. 235.

breaches even after assignment, by a release given before actⁿ - but ^{of 1st class} But a release after actⁿ but is not operative, for the right has attached to his person. Cu. is the first rule in this section agreeable to the analogies of Law in similar cases? I don't understand any principle to support this rule - yth is indeed no authority ag^t it.

Cost. 307. Publ. 100.
Exp. Loo. 292. 26. 38
Loo. Dec. 99. 2 How. 40.
Loo. 295. Lark. 41.
Loo. Roy. 30.

A Gen^l's release by covenant before court broken does not ^{discharge} ~~release~~ the covenant. Because there is no demand at the time. Is a release of all suits, actⁿ & quarrels does not discharge the covenant before the breach occurs.

But a release of all covenants before the breach is good & discharges the covenant; but in the former case the future claim - is not within the release -

yth most comprehensive words of release are "all demands" but yth extends only to existing demands.

It conceives yth is one exception as where one has covenanted to pay a sum of money at a future time, yth is discharged by a release of all demands. yth is a debt in present, & lies down in future.

Exp. 57.
Exp. 307.
Loo. 578.
Loo. 38.

Covenant.

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Pleadings, in Covenant Broken.

The declaration in covenant should always state expressly for, & not under seal, it is a covenant. *Exp. 298.*
Pl. 814 that the covenant was by deed. But case will *Exp. 298.*
Ans. B. 517. lie on an instrument not sealed. In Bar. it need not be stated to be by deed.

"Covenant" therefore, as used by Bar. con. 244-5 seems an improper term - Cannot be a *Exp. 268.* bare covenant at law - for a covenant is an instrument written & sealed.

Formerly Plff. must always aver the deed, i.e. that he brings it into the bar, or in

He makes perfect Wils. 16. in court after giving? *Pl. 1186.*
Pl. 1186. witnesses that it is lost 3 T.R. 151.
 by fire, torn or assented to *Pl. 109-113.*
 4. Bar. R. 585. 6 Co. 38. 244. 245.

Def'ts power - May now declare on covenant or other deed, as "lost by time or accident," & has dispenses with the necessity of making respect

to the act there is strictly no plea which can be termed a general one for non est factum only puts in issue the fact of sealing the deed. *Exp. 298.*
Pl. 1186. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

When covenant is genl. a genl. assignment of the breach is suff't. i.e. q. a covenant not to buy or sell certain articles within two years - Avment that Def't had sold to A. & others (not mentioning whom) at given days is good -

The most genl. assignment of a breach is in the words of the covenant, i.e. q. covenant that so soon as well used in fee - avment that A. was not well used in fee, is suff't -

Another universal rule is, that the breach should be so assigned as to appear clearly to be within the covenant i.e. q. covenant by lease "not to cut or move

Covenant.

of the plea of "non est factum"
vide 2 Selw. N.P. 457.
"Sett off" de 461.

Loco. C. 348.

Day. 203.

Esph. 244.

Plea of Infancy, which is a good
bar to the action must be specially pleaded
it cannot be given in evidence and ~~is not a plea~~.
As to being a Bar, see Co. Cur. 179, two.
See. 498. 11 Mod. 271.

tinder than necessary for repairs" - agreement
that he cut to the value of £100 not good - It cannot
be known judicially how much tinder was necessary.
Def. should allege that he cut more & than how
much more than was necessary -

If by subsequent words Def. narrows the
breach first assigned only he must confine
his proof to the subsequent words: ex gr. Def.
declares that the Defor has not used the land
in a husband-like manner, but has committed
waste - Now his proof must be confined to the

2 R. 307

"Reluctant in tenement" could be pleaded
in bar to a covenant broken for the covenant of
Defor is on estoppel. 11 R. 818. 11 R. 154 & 8 B.
7 R. 20. 537. 8 de 487. 1 de 86.

Fact of waste committed.
Where there is a promise in the deed, defeating
the covenant in a certain event - Def. need not
set it out & negative it. Def. should plead it -
ex gr. covenant to deliver goods &c, promise that

Esph. 200. 11 R. 55. 6 if Defor was prevented by the sea, the deed
should be void - Now, of an exception in
Esph. 300. the body of the covenant - Such a proviso is in
the nature of a defeasance - It is a condition
subsequent - An exception in the body of
the covenant is not a defeasance, but is a part
of the precise stipulation & goes to the description
of the covenant & must be counted on, as it makes
a variance between covenant & declaration -
If Def. sets out his covenant as an inconsistent
breach under a seizure or reddition, it shall be

Covenant for non payment of rent Defor
must plead "divided by distress" for this
acts to a confession that the rent was not
paid at the time appointed. 11 Mod. 19.
2 de 243. 8 B. As to Release "cant be
pleaded if given before cause of action accrued
1 Inst 292. 6. two Cur. 503. 1 Lev. 99.
7 R. 205. Bony. 97. But see p. 248
the act of Defor for rent or money due on
a contract for a sum certain, is preferable to
covenant - in the latter case of Defor makes
judgment by default he is not bound to put in
Babin error. Didd 1077-9.

He must state if is exception
and no matter it.
If Def. sets out his covenant as an inconsistent
breach under a seizure or reddition, it shall be

rejected after verdict a surplusage; ex. gr. Covenant declared
 on date Dec '98 & a breach assigned afterwards viz May '98.
 1st. 232.
 Esp. 300.
 (good after verdict repugnancy notwithstanding -
 Qu. Is it good on genl demurrer? It is clearly ill
 on special demurrer -

Covenant in the alternative (i.e. for one of two things)
 breach must be assigned as to both; now Poff shows
 no cause of act: ex. gr. Covenant by lease not to cut
 wood witht. the assent or assignm^t of lessor &c. Assent
 that he cut witht. the assignm^t &c. is not good - If
 lease has assent or assignment of lessor, he is not
 liable on his covenant.

But on Covenant "to pay or cause to be paid" "has
 not paid" is suff^t; for "causing to be paid" is "paying".
 1st. 229.
 Esp. 300.1. This is not a covenant in the alternative in judgment
 of Law, tho so in form.

If Defor Covenant to pay on one of two contingencies
 "whichever shall first happen" assent that
 one has happened &c suff^t. - with assent it to
 be the first, ex. gr. Covenant to pay on the death or
 marriage of L^d "whichever" - tis suff^t by way of
 assigning the breach "that L^d is dead".
 2d. 132.
 Esp. 301.

If the covenant is that an act shall be done by
 the covenantor or his assigns, & it is not after the
assigns breach must be in the disjunctive. "either
 done by him or his assigns".

Covenant.

This rule holds not where the act is done by the original covenantor himself; for there an assignment is presumed: i.e. it is confined to acts of the assignee. If the act is done by the assignee of covenantor the declaration presupposes & presumes that there has been an assignment. This idea is excluded if the act is done by the covenantor himself if he has assigned and if assigns have performed if covenantor may plead or covert to do an act in favour of a man or his assigns (as to convey) avoids when if action is brt. by himself by covenantor that it was not done to the covenantor himself is suff. - If done to his assigns, Defor. must show it.

1 Salk. 139.

Exp. 302.

3 Keb. 440.

5 mod. 133.

q^d may be true though repaid for of. task.

In an act or a covenant for a sum or in debt

certain, no apportionment of demand can be made, & the breach must follow the

covenant i.e. substantially or more particularly so many

ex. gr. brt. to pay £10 per ton for goods

breach assigned for not paying for so many tons some ld. on demurrer, breach holds in assignee

in charging for the ld. This vitiates the assignment of the breach. Now if covenant had been to pay per ton & secundum ratam, i.e. at the rate of so much per ton, the fractional part of a ton would not vitiate the assignment.

Principle by Rt. good plea in bar Id. R 77. 11 Jones 148. Comp. 242 anti. Co. Temp. Hardw. 172. Bul. N. C. 165 as to partial eviction.

11 H. 19

2 Lev. 124.

Exp. 303.

Allen 19.

Salk. 558.

Covenant.

Leach 575. The rule that where there are affirmative covenants
 Esq. 305. or conditions for the performance of an inheritance
 Sider 421. number of acts &c. Defor. may plead performance & guilty
 1 Port. 30 243. is established merely to avoid prolixity & burdening the
 Cro. 2. 749. 910. void - vide "Plea & Pleading"
 1 R. 753.
 4 Bro. 91-4.
 5 Bro. 85. 256.

The same genl rule of pleading is allowed in
 8 R. 459.
 2 Wils. 11. replication, assigning breaches of conditions in
 3 An. 55.
 1 R. 282. acts on personal bonds, where the assignment
 1 Bro. 11 520.
 2 Burn 772. of every breach specifically wants tend to great
prolixity Day 203. contra

But where some of the covenants are negative
 Defor. cannot plead performance specially -
 Plea. 2. 25. 26.
 5 Com. 89. 238.
 Cro. 2. 753. 249. but he must plead specially that he has
 Co. Lic. 303. ^b not done the acts covenanted agt. - advantage
 Esq. 576.
 4 Bro. 91. is taken of plea of performance of negative covenants
 Esq. 305. by special demurrer only - Plea & Pleading
 Cro. 2. 752. 5 Com.
 258. 86. 4 Bro. 92. genlly in this case aided on genl demurrer -

If negative covenants contained in a deed are
void, he may plead as if they did not exist. or, qd. Defor. ^{among other things,}
 Plea. 2. 25. 26. is not to give process of a kind that is void
 1 R. 282. 117. 118. 5.
 5 Com. 238. 89. he need not notice it in his plea. The same as time
 4 Bro. 113.
 Moore 288. I suppose ~~suppose~~ with affirmative covenants. No
 difference in principle, if void whether negative or

Esq. 305. affirmative.
 Esq. 305. 6 Bro. 302. E. The covenants are in the supposition
 4 Bro. 91. 8 Bro. 125. in his plea of affirmance -
 Defor. must show which he has performed -

Covenants

233.
 Co. D. 232. (Co. D. 24. 1 Leo 311.
 4 Bac. 91. That is in a special Plea it on genl Denumer: Ex. 92. Covenant to convey
 answer only on 1 Demand. Land or pay money; now if L pleads that L has
 117. Note
 ind. L. thinks Baer
 is right on principle conveyed on his part, to bad - should show which
 fault only fault in q. R has performed, plea of non damnification
 plea is in its form as it shows performance not good. L debt on Bond conditional to pay
 When one cove. do what in principal debt
 matter of law plead spec. money, at a day certain, tho it appears from
 & quo modo.
 What is legal discharge? the condition that the Bond was given as an indemnity
 in matter of fact. 38.
 cove. to do what is He must plead performance of that particular act
 matter of record he must plead by which he has waived q. M. L. unless.
 specially & quo modo.
 H. L. 67. 107 q. L. 25. Co. i.e. payment of the money where the facts are
 L. 103. B. Co. D. 560. uncertain.

But in this case where the facts are
 unascertained if Def^t pleads affirmatively, that
 117.
 1 Demand. 117. n.
 260. 3. 41.
 L has paid M^{ff}. L. unless, he must plead quo modo
 Co. D. 362. 34.
 Co. D. 918. 433. But if he does plead affirmatively & not quo modo, it
 4 Bac. 92.
 1 Leo. 194. 1 Demand. 363. is only a special denumer for it is but a fault in
 & Roll. R. 159. 1 Demand. If covenant is for an act to be done, even by
 Co. D. 559-60. a stranger, performance must be pleaded specifically
 560. 2. Resp. 305. as if q. act was to be done by himself.
 i.e. according to the preceding distinction. Exception

I suppose in case of a multiplicity of facts - (at least)
 1 Mac. 96. 124.
 1 Leo. 23. 1 Leo. 144.
 And if human or? in other every kind of
 Law as well as every
 kind of fact.
 If Def^t pleads genlly, non damnificatus, in
 when q. is a binding plea.
 cove. to save himself; a replication consisting of a
 genl traverse still. M^{ff}. must show special damnification.
 ex. 92. Declaration that Def^t has not paid M^{ff} L. unless he
 M^{ff} Def^t not damnified & - special bread in replication
 in cove. must show in a Lib. Def^t he has been damnified

A Coven^t in one deed cannot be pleaded in bar to
 2 Vent. 217.
 1005 an actⁿ in coven^t in another deed under the same
 bare nature of a defence to the last

But a defence in a separate deed may
 be pleaded in bar, but the second deed must appear
 1 Hall 473-5.
 3 Do. 298. clearly to have been intended as a defence in
 Esp. 306.
 6 W. 6. 426. the first - as reciting the first deed & declaring
 1005. 2. 300. 623. it to be void to be <sup>avoid & satisfaction in a good plea in discharge of damage,
 for coven^t broken. 8 Rep. 676. 1005. 2. 376. But not
 if given before any breach. Little 358.</sup>

But one coven^t may be pleaded in bar to an
 6 R. 737.
 1 Lev. 152. actⁿ or another coven^t contained in the same
 1005. 315. 8 W. 483.
 Mod. 679. - Deed with words of defence - for the sense
 is to be collected from the whole deed

Coven^t that leasee shall pay so much rent & 1000
 one by the lessor that leasee may retain so much
 800 for repairs as he has done &c. This is a good
 bar to an actⁿ for the rent

of Joint & several coven^ts

These rules are not peculiar to coven^ts broken, but
 common to all actsⁿ founded on contract.

If three coven^ts jointly & severally, all may
 3 R. 782.
 3 Bac. 698.
 1005. 2. 6.
 1005. 2. 38. be sued on one; two only cannot. It must also
 be treated as altogether joint^t or altogether several

This rule is com^o to all actsⁿ on contract

3 Bac 679. 2 Warr. A coven^t is joint only all must be sued - on one
 1005. 1005. 397. several contract is one by which an individual binds himself

Covenant.

2 L.R. 182.

2 L.R. 146.
5 L.R. 184

1 Bos. & 445.
1 East. 497.

5 L.R. 18-19. 7-8.
Bul. 167-8.
2 L.R. 47.
3 L.R. 180.
4 L.R. 177.
1 Lard. 153.

5 L.R. 18-19. a
Lent. 252.
1 East. 497.
1 Wm. 832. 3d. 496.

If there are two or more joint & not several / co-covenantors / obligors & all must join in an act - Release.
Defect would be charged doubly & Rule common to all acts on contract. If all do not join. Defect on eye may demur.

In this case if one of two joint obligors & is dead, his Ex' cannot sue, leaving the other; the right survives entire to the survivor.

In some cases where one covenants with two or more jointly & severally in joint - i.e. to them & either of them, or each of them / one of the covenantors may sue alone; in others, all must join.

Rule - If the covenant is in form joint & several, each may sue separately; ex gr. Homage to A & B black acre; to B of white acre, & C & D covenant with both of each as to all.

But if the interest of co-covenantors is joint all must sue, i.e. all must join in the act on the covenant.

But if Black Acre only is demised to two & each covenant with each &c. The interest of the covees is joint, & both must join in an act on the covenant.

So that the two or more obligors or co-covenantors may bind themselves severally for the same.

Cause; yet two or more obligors, covenantors &c cannot have several interests or rights of actⁿ for the same cause. There can be but one satisfaction.

So a grant to two jointly & severally of the same thing is joint only; the more several is wholly inoperative - for they must take jointly, or not at all - They are Joint ten^{ts}.

If two covenant jointly & severally, each may be sued & subjected alone for the neglect of the other, according to the terms of the covenant; even

Ja. 553.

3 Bost 251.

8 Co. 46.

14 Mass. 116.

Bro. 1, 113-4.

tho the one party has not been negligent.

Recovery of judgment ag^t one of several joint & several obligors, is no bar as to the other -

To taking the body of one in execution is no bar to

8 Co. 86.

Whitely 182. 124

2 W. R. 1296.

an act ag^t the other - Actual satisfaction is a bar to an act ag^t the other.

1 Bost 400.

"New 11"

If one of two Joint obligors, covenantors &c dies, his Ex^r is not liable at Law to obligee &c him, if joint & several - Even the Ex^r is liable at Law to obligee &c

Comm. 532.

Wig. 1856.

St. 96.

If two covenant or promise jointly or severally in the disjunctive; "or" is construed "and" i.e. conjunctively -

Covenant

3 Bac. 399.
8 Co. 138.
Falk. 300-
Co. Litt. 264^a

If several are bound jointly & severally, & one is made Rep^t to the obligee, the obligation is released at Law, as to the whole; because it operates as complete extinguishment of the bond.

Salk. 240. 2 Bac. 311.
4 Geo. 160. Cro. C. 373.
2 Bos. C. 254 5. 3 Mod. 62.
10 do. 575

So in Chanc^y also, the release is complete as to all, as to the obligee's representatives - but not as to his creditors or legatees in Chanc^y.

1 Brer. 393.
2 S.R. 32.

If an instrument begins with the words "we coveⁿ" or "promise" &c, & is signed by one only, he may be sued upon it. He is sole obligor & may be so sued -

2 H. 146.
2 R. 37.
1 Brer. 323.

If an instrument recites that A, B & C naming them, on one part &c, & C does not execute, i.e. at Com. Law does not seal or in Chanc^y does not sign; covenantee may sue A & B alone & aver that C did not execute - It is the coveⁿ of A & B only.

3 Bac. 397. 1 H. 235.
5 Brer. 281. Huttig 175.
2 Atk. 31.

Gen^l rule - If two or more bind themselves together in one obligation, or make a united promise together, that contract is joint of course - & always, I suppose, the the word "jointly" is not used; unless words implying or importing a several obligation - or debtly are used -

Covenant

McCansfield says that all covenants between parties are joint & several - He means they are joint & several in their ultimate operation. Because each is liable to pay the whole -

If a covenant begins "I covenent" &c. & Moore 2811.

Chatter 175. is signed by two, it is joint & several. The Peake 130

Sta. 16809. Pronoun "I" is taken distributively - & is

2 R 1544

Stoa. 1892. applies to each subscriber.

Actions or Covenants taken are Transitory when founded on privilege of Contract; & Local when founded on privilege of Estate only: (but if the deed bears date in a foreign country it must be so stated in the declaration & the venue for a place of trial, under a writ de recto). the following examples serve to elucidate the position -

Transitory

Lessor vs. Lessee: Lessee vs. Lessor: (by Stat. 32 Hen 8th) Assignee of Reversion vs. Lessee. 1 Santa 237: (by same Stat) Lessee vs. Assignee of Reversion.

Local

Lessor vs. Assignee of Lessee: Assignee of Lessee vs. Lessor. 2 East R. 575: Assignee of Reversion vs. Assignee of Lessee. Bath. 182: Assignee of Lessee vs. Assignee of Reversion.

Where the act is local & tried in a wrong county the defect is cured after verdict, by Stat. 16 & 17 Geo. 2.

The cov^{rs} jointly and severally either may be sued for the non performance of either. Or. S.D. though they are also jointly liable.

stud a necessity of judg^t ag^t one without satisfaction
in no bar to an action ag^t it or other.

3. Syst. 251. h. 60. 46. bro. Jar. 73. 74.

Two are jointly and 100% bonded and one is sure and taken on execution y.^{rs} is a bar.

Sb. ~~Mc~~ Chitt. Bills, 124. 182.

One of the joint obligors, ~~to~~ ~~of~~ ~~the~~ ~~same~~ dies in 45
is not liable, at Law or in eq. court.

but in case of joint and sev^l obligation either of
S^rs surviving others may be sued at \$1000
but, 400. but J^{ts} can not be joined.

Reason. So far as q^t are sec^y. liable q^{ev} are two mts.
and in case of joint cont^y of q^t is liable in q^t .

provided y. survivor is insolvent.

"the jointly or severally," "or" is construed conjunctively as
with the word jointly and severally be void for uncertainty.

Conf. 832. Riddon Bilt, 185. 18h. Strange, 78.

that beginning on 1st of Dec^r and signed by one only of J. serving
it is in effect his sole obligation and may be so declared
1 Bar. 323 & T. R. 32. Upon; and so youth of other moneys
are wanted. J. does not know of necessity of answering v. J.
if others did not execute it for it shows nothing more than
J. Spe. 444 & T. R. 14. 11.

Cost commoner "Jaco." and issued by two or more
is a joint and sev. cost. It is to be taken distributively.
Peak's Case, 130. Stra. 76. 80 q. Ld. Ray. 1544.

There are now two questions in one obligation if cont. is
joint cause without y. (good joint) and only joint
unless you are words importing a several obligation. 1 H. 127, 238.
3 Bos. 697. Little, Obligation.

Action of Assault & Battery

263

"Assault" is an attempt or offer to do a corporal harm
1 Bac. 154. to another without touching - ex. gr. Lifting a weapon
3 Bl. 120. Ex. 312. or fist in a threatening manner.
But 15. or fist in a threatening manner.

2 Roll. 545. To presenting a gun, drawing & waving a sword
1 Vent. 288. pointing a pitch-fork &c at one within reach of it.
1 Hawk. 133.

Any unlawful sitting upon a person is by an
1 Inst. 202. assault.
3 Mc. 120. offer so to beat. This is an inchoate violence & amount
3 V. 410. to an injury. -
- 85.

But a gesture otherwise amounting to an assault
1 Mac. 154. may be explained by words so as to fall short of an assault -
ex. gr. "I lay my hand on his sword" & says "if I were not
1 mod. 3. 2nd. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 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1349. 1350. 1351. 1352. 1353. 1354. 1355. 1356. 1357. 1358. 1359. 1360. 1361. 1362. 1363. 1364. 1365. 1366. 1367. 1368. 1369. 1370. 1371. 1372. 1373. 1374. 1375. 1376. 1377. 1378. 1379. 1380. 1381. 1382. 1383. 1384. 1385. 1386. 1387. 1388. 1389. 1390. 1391. 1392. 1393. 1394. 1395. 1396. 1397. 1398. 1399. 1400. 1401. 1402. 1403. 1404. 1405. 1406. 1407. 1408. 1409. 1410. 1411. 1412. 1413. 1414. 1415. 1416. 1417. 1418. 1419. 1420. 1421. 1422. 1423. 1424. 1425. 1426. 1427. 1428. 1429. 1430. 1431. 1432. 1433. 1434. 1435. 1436. 1437. 1438. 1439. 1440. 1441. 1442. 1443. 1444. 1445. 1446. 1447. 1448. 1449. 1450. 1451. 1452. 1453. 1454. 1455. 1456. 1457. 1458. 1459. 1460. 1461. 1462. 1463. 1464. 1465. 1466. 1467. 1468. 1469. 1470. 1471. 1472. 1473. 1474. 1475. 1476. 1477. 1478. 1479. 1480. 1481. 1482. 1483. 1484. 1485. 1486. 1487. 1488. 1489. 1490. 1491. 1492. 1493. 1494. 1495. 1496. 1497. 1498. 1499. 1500. 1501. 1502. 1503. 1504. 1505. 1506. 1507. 1508. 1509. 1510. 1511. 1512. 1513. 1514. 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2013. 2014. 2015. 2016. 2017. 2018. 2019. 2020. 2021. 2022. 2023. 2024. 2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136. 2137. 2138. 2139. 2140. 2141. 2142. 2143. 2144. 2145. 2146. 2147. 2148. 2149. 2150. 2151. 2152. 2153. 2154. 2155. 2156. 2157. 2158. 2159. 2160. 2161. 2162. 2163. 2164. 2165. 2166. 2167. 2168. 2169. 2170. 2171. 2

Assault & Battery

3 Bl. 120. Nich 202. actionable injuries; when they occasion an inconvenience
1 Rom. 540. 1. 2 Roll 545. They are actionable, otherwise not.

3 Bl. 120. 1 Roll 545. The act is tresp. vi et armis & for this an immoderate
violence.

The injury must be immediate. But not necessary
to a Battery that the injury should be the instantaneous
effect of the act of the wrong doer: suff' if produced
by extension of effects - Any wanton act by a third one
causes a Battery supports the action - Ex: e.g. Beffs.

Pinl. 295.

3 Wils. 103. 1 Bl. R. 892

1 Cr. 534 - -

Place a squib into the market place which eventually put
out Off's eye -

The particular distinction, between tresp. & case
tresp. - tresp. on the case.

Est. 312.

1 Bull. 15.

1 Wils. 103. 1 Bl. R. 892

So if one pushes another wantonly or cruelly
& the latter falls, & his hand, this act lies ag't the first.
To tresp. vi et armis, but 2. 403 one both liable. - -

If a horse taking sudden flight runs ag't a person

Cap. 56. 4 mod 405. 1005.

1 do. 24. 1 Rom. 589. 1 Lalk 397

1 Bull. 15. That is liable in

an action on the case. 2 Cr. 100.

594. 1 Cr. 534. 1 Bl. R. 892

the rider is not liable at all if not guilty of neglect -

But if a third person struck the horse, he would be

liable for all consequent mischief. - Ex.

When a person receives bodily hurt from an

act to which he consented, he may sometimes have

this act, at other times not. - Puhl: if the act

consented to was itself legal, he has no remedy. e.g.

but by playing at cudgels - no act of promotion, courage.

If hurt by boxing consented to. he has this act. - Ex.

boxing is unlawful. consent could not make it

lawful & violent non fit superbia loco: not apply -

Exp. 313.

1 Mac. 154.

1 Bull. 15. 2 Cr. 174.

Assault & Battery.

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consent is void - In. are not both participes criminis?
The negative branch of the rule, I doubt. The maxim in
pari delicto melior est conditio dependentis does apply -

2 Esp. 313. To consenting to be beaten does not justify the beating
as to the bea^ter, but good as to the civil actⁿ
1 Com. 218.
But. 17.

Lane on 12/19/105. But that the injury happened in an amicable contest
as wrestling is a good excuse: consent is good -

If one permits another to draw a tooth for experiment, or
let another whip him - can't have a civil actⁿ

2 Bl. R. 890. If one in defending him self accidentally hurts another
1 R. 458. behind him, he is liable to this actⁿ & if he runs backmate
in defending him self, hurts another, he is liable to this actⁿ

A malicious intent, or indeed any intent at all is clearly
not necessary to subject to the actⁿ of homicide or arson, for a
Terrorist is liable to it civiliter tho' not criminaliter. The rule
is the same as to an Infant. An Infant of any age may be used in
this actⁿ one instance of an Infant used in this actⁿ at the
age of 4 for scratching out an eye

It is a good rule, that in cases arising ex delicto, innocence
of intention excuses - not universal - To maintain a
criminal prosecution, malicious intent is necessary -

But how far accident will excuse on involuntary
tresp. is a question of some difficulty: according to Benth.
1 Com. 81. to subject to make one liable in this actⁿ that he can trace
the physical cause of damage - This is too broad a rule -

Assault & Battery

For it would not admit of even inevitable accident as
an excuse; If the injury happens, by the fault of the
party injured he is excused - If the Def^t can be regarded
as agent he is liable in this action.

Ally-35. Lane. R. 25. 9th 1848. It is said that inevitable accident or inevitable
necessity only shall excuse a battery -

10th 1849. 10th 1849.
3rd 1849. 4th 1849. 5th 1849.

"Inevitable" I think means that the accident should
be physically unavoidable; if so, the case in Bul. 10th
seems not to be law, where a distinction is taken between
a wantonly striking a drunken man & another &
an attempting to assist him - For in the latter case
the act is not physically impossible - In 10th 1849
the 1st the story was the word inevitable, argue on the
grounds of neglect - Be careful of utterly, with this, Bul. 4th 1849.

10th 1849-5-1848.
10th 1849-12.

If one in defending himself strikes another behind, he
is liable, but here is some neglect, he ought to have looked
behind him - Cu.

2nd 1849.
2nd 40% -

Bul. 10th supposes that if a horse used to run away with
his rider takes a fright & in running injures another,
the rider would be liable (Cu. in Book 1) on the ground
of neglect - & yet the immediate injury would seem as
physically inevitable as if the horse were not addicted to
running away. In the case of a cart - Ledge of stones
which falls in. Other cases, there was neglect -

10th 1849.

3rd 1849.

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Exp. 383. H. 546 & B. 292 In the case of chopping boughs - uncocking a gun

2d. 174 157 & 8. In when a timber floats on his land -

Hob. 134. 3 M. 377 The rule is clearly that where the injury is inevitable

2 B. R. 595.

the Defd. is excused - ex. gr. one taken with an apoplexy
falls, or another (can the injury be D to be inevitable
where the act causing it is voluntary - i.e. where the
act is not the effect of a cause above the agents control.

In other cases I am disposed to think that if the act

Exp. 599.

Bul. 15-16.

Est. 313-17.

causing the damage is lawful & the agent guilty of no
neglect - no want of care - He is excused ex gr. as

Helping a drunken man on foot in Bul. 18 & B. 1st.

How great must the care be - ordinary prudence it would
seem is suff^t on principle - but it is not according to
the books - In the case in 4 B. 292 the Defd. would
not be considered as the agent nor the act his unless the
injury was voluntary on his part - Where the injury
is wilful, the author of it is undoubtedly liable

But where the act causing the damage is in itself
unlawful, the author is in some form of act, either

11 M. 295.

2 B. R. 293.

2 B. R. 1544. 280.

12 M. 503.

in Negl or care, liable at all events whether there is

the least neglect or not for all the consequences, mediate
or immediate - The Lawfulness or unlawfulness of the act

does not determine the nature of the act - i.e. the forfeiture of
the remedy - The above rule as to accident or

involuntary injuries so apply to Negl. in 2 B. R.

Three kinds of defence - Denial of injury or intention.

Excuse & Justification -

Bul. 17.

Assault & Battery

1 Com. 589. Assault & Battery is justifiable in many cases

11 Mod. 155. — An officer having legal process to arrest one man
1 Hawk. C. 1. 130. Beat him in case of opposition, so far as is necessary to
effect the arrest.

But a battery is not justifiable in this case unless
La. R. 229. 2d. 1047. there is an actual resistance or an attempt to escape.
Butt. 17. C. 1. 314. 2d. 402. An arrest simply will justify an assault only.
Cra. 131. 93 Butt. 18. 19.

2 H. 1049. 2 Roll. 548. 1 Br. 16. But a molester maims imprison in making
Butt. 19. 5 Com. 355. the arrest is justified tho there be no resistance.

5 Com. 355. 4 In. 387. Plea of molder he goes to the justification of the
Cra. 131. 93 4. 2 Kent. 193 Battery as well as of the assault. — but not of Cruising
Cra. 131. 93 4. 2 Kent. 193 Battery as well as of the assault. — but not of Cruising
8 L. R. 299. — wounding he —

3 Bl. 120

Battery is justifiable on the ground of self
defence — as if one strikes me first, I may strike him
1 Com. 589. — So an assault by the P^{ff} is suff to justify a battery by
Butt. 17. 18. — the Def^t as if P^{ff} lifts a weapon &c.
Cra. 131. —

But there must be some proportion between the
assault or battery by P^{ff} & that by the Def^t. — for every
11 mod. 43. Butt. 18. assault &c. however small will justify every battery
however great. & the proportion is a question of
evidence — A small blow will not justify a mayhem
1 L. R. 642. If strikes Def^t a scuffle immediately ensues & P^{ff}
2d. 246. is mayhemed — Def^t is justified —
Cra. 131. —

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The plea in this case is son assauts demene, i.e. the first assault proceeded from the P^lff & that Def^d struck in self defence. But mayhem it seems is not justified by P^lff's aggression unless the P^lff's act might endanger Def^d's life, or member — as to the replication de injuria mea propria see vide 1 Bro & 76. 8 Geo. 86. 1 Selw. N.P. 21. n.

If P^lff was the blameable cause of the Battery tho he did not strike or threaten to strike, Def^d is justified in some cases. as where P^lff tilted the seat on which Def^d was sitting & Def^d cut off P^lff's finger. But the mayhem in this case seems to have been justified by P^lff's attempting to gouge Def^d according to the 11 mod. 43. So where P^lff thrust his money into Def^d's ear & a scuffle ensued. Def^d 315. Bro. loc. 366. is justified.

Parents are justifiable in giving children reasonable correction. So masters their servants. Schoolmaster his scholars. Tailor his prisoners —

1 Hawk 130. 4080. 1255. So according to some, a husband his wife — These rules constitute special justifications.

Def^d 314. But B. a man may justify a Battery in defence of his wife & e converso. So of parent child. Black. assistant. 40-1.

Clearly a Lord may justify in defence of his master — & it is the better opinion tho not settled, that a master may in defence of his servant on account of the relation. 1 Hale 484. Def^d 307. 2 Bul. R. 14. 1 Bro. Trespass. 122. 1761. 429. 5 Geo. 354. 11 Geo. 953. — Selw. N.P. 25. —

Assault & Battery

Exp. 318.
Lu. R. 62-

That the battery must have been in defense of the wife &c
to prevent her from being injured - not vindictive.

vide Form of this justification
2 Luter. 1435. + note by
H. M. in 1 Land. 296.
Bul^r N.O. 19.

I am very sorry to hear in reference of his
house forcibly invaded, as by breaking a door, gate he
with force

But if there is nothing more than a mere entry on

Verp. 314.21202. Al. 548. g/ an ^{16.2.}

July 19.

Lark. 641;

1796. 130

another close which implies force in Law only the
owner is not justified in a battery with a request
to depart.

In case of entering on Lands Lower than

Ent. 15. 14.

Ex. 21415. P. 82.

Path 40th

Lat. 40° - Lon. 95. 4

1 mod. 96. 3. R. 4. cont.

Sutton must, in blooding be justified not as a
killing, but as a mollified murder & ex post facto see Letter 44th 5th
tra.

The last rules contemplate the owner of property in possession & relate to his right of defending his possession - but when he is dispossessed or has possessed a different rule now obtains tho as to real property not known at Common Law - At Common Law one who had a right of possession on entry on Lands was allowed to regain possession by force from the dispossessor or dispossession.

But now by several ancient Eng. State. The first of which is the 5th. Vict. 2^d one may not enter on Lands 10 of which another is in possession, as by Lording over after a term is expired or taking a vacant power, except in a peaceable manner.

Bro. Cav. 138. —

2 Mar. 555. 4 Bl. 148.

340.174

Learn Sam has Stat, 1st Learn. 209—

Assault & Battery

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These Stat. contemplate only possession which are in some way & in some degree abandoned - as in the case of a lease when the possession is given to the lessee, & in case of lands &c of which the possession is neglected by the owner & vacant. - merely taking a journey is not an abandonment so as to exclude the owners right to use force (possession) till forcible entry &c -

3 H.L. 6-5. 3 Inst. 174. In case of personal property the owner is not allowed at common law to regain possession by force, unless feloniously taken - & in that case, it is on the ground that another person may arrest the felon with a warrant, but not on the ground of his right of property. Provocation merely never justifies a battery - but may mitigate damages.

1 H.L. 6.
Inst. 307.

for battery officers
see 1 H.L. 6. 289.

This rule (as to personal property) seems to me arbitrary & that the reason in favour of recaption in case of personal property is much stronger than for real property. The former may be carried off - the latter cannot. ^{He may retake peaceably, & if opposed may oppose force to force. 1 H.L. 6. 289.} ^{think then he must justify another man's property}

1 H.L. 6. 354.
Cox. C. 6. 242.

A servant cannot justify a battery in defence of his masters goods - nor children, in the masters presence but if transporting his masters goods, he may justify a battery, he has the possession.

Rep. 316.

Assault & battery at different times, cannot be said

Cox. C. 6. 288.

with a continuance nor several distinct &c

6 East 395.
2 Bos & Pul. 425.
contra.

For an assault is one entire individual act. 1 H.L. 6. 289. 23. N. 1. & 1 H.L. 6. 289. 7. as to continuance in general

Assault & Battery

If a Battery committed on the wife husband & wife should join, & the injury should be laid ad damnum ipsum &c.

100. 310. 182. 1887.
Holl. 182. La R 1808. The husband is damaged by expense & cost, & the wife is personally injured & the damages survive to her -- If the

100. 310. La R. 1808. damages are laid ad damnum of the husband only, judgment may be awarded even after verdict --

100. 321.
100. 480. If P's are not husband & wife, when they sue as such it must be pleaded in abatement.

100. 310. La R. 1808.
100. 782. 182. 1808. wife
100. 180. 1805. If a Battery has been committed agt husband & wife both, he alone must sue for the injury of the Battery to himself that it both join in this case for both batteries & get verdict & entire damages as given, judgment will be awarded in toto; but if several damages will abate, proceed the husband after verdict.

100. 317. La R. 1808. If may law in his declaration in aggravation of damages he said many facts for which in themselves he could not recover - e.g. assaulting servant &c. is it to aggravate damages or to show how enormous the trespass was? W. Battery can't be laid with a continuance.

100. 317. La R. 1808. In Temp. a justification must be pleaded
100. 180. 1805. specially in case of a Battery, or son avoué someone
100. 180. 1805. To in other cases of Temp. i.e. where the Defor on the facts shown is prima facie a trespasser - But an excuse may be given in evidence, or pleaded as inevitable accident &c.

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But circumstances which attended the transaction or words spoken at the time tending to create mutuality

Exh. 17. The Defor. ship may be proved in mitigation of damages tho' if pleaded they would have been a justification

Exh. 318. If Defor. justifies an assault or, he must confess the

Talk 637. Battery or the plea is ill -

Exh. 317. Bone 85. The genl. replication to the plea of non assault or is

Bon. 354. de inquis sua proprio aliquo tali causa

vide Form. Co. Ent. If Defor. pleads non assault or a Pff can justify that
2d Ed. 644 a. assault, he must reply specially in justification; for he

Exh. 317. cannot give in justification in evidence under the genl.

Bon. 288.

Talk 612. replication de injuria &c. See vide. 1 Selw. N.D. 11. 2d. note. 5.
1 Inst. 282 b. 283 c.

Exh. 317. Bul. 17. Matter of excuse may either be pleaded or given in evidence

Talk 637. 4 mod. 404. under the genl. issue - super, i.e. what goes to the act & goes to the amount of the damages

To the plea of molitor manus or, Pff may reply de non tort nemine, which I suppose includes a denial of

1 Bon. 368. the justification; or reply an outrageous battery aliquo

Thim 381.

Talk 1436. Loc, molitor manus &c

Pff is not compised in proof to the time laid in the

Bul. 17. 1 Rec. 79.

Rev. L. 32.

Talk 722. declaration, but may prove any battery (not caused by the

Exh. 307. 921.

319. 115. 287

Exh. 303.

(elimination) To a special plea must cover all the time must be as broad as the declaration - vide Bone 287. 1 Bul. 128. 2 Bound. 295. Rev. L. 928. Robert 164. 2d 231. 24.

Assault & Battery

Bul. 17

Read not 547

Read Rff answer as to prior & subsequent time, when
 he pleads in assault someone; it seems not - The better
 way is to plead not guilty as to the trespass except the
 one intended to be justified - For form of replication
 vide appendix to James on Pleas

Exp. 318

The plea must be as broad as the declaration
 as to the subject matter - i.e. should cover the whole injury.
 e.g. If Rff charges an assault & battery & wounding

Pro. 208

a plea reaching the battery & not the wounding is
 ill. - For assault someone covers the whole prosecution

Exp. 318

as well to the wounding as the assault &c. For the
 words are that the Rff made an assault &c. & that
 the Defor then & there defended himself, & if any
 damage or hurt, it happened &c. Plea of negligence
 in no answer to a charge of wounding
 it admits the wounding -

Exp. 318

14 R. 102

2 Roll. 546

Pl. 953

In justifications founded on the relations of
 husband & wife, master & servant - the assault &c. must
 be averred to have been made to prevent injury to the wife, servant
 master &c. not by way of revenge or retaliation

Co. Inc. 234. Exp. 318. Wife cannot plead alone, Husband must join in all cases

Pro. C. 30. Exp. 318. 46

20. 11. Co. Inc. 73-4

Bul. 20. Exp. 318

A former recovery of damages agt Defor on another
 for the same injury is a good plea in bar. This is the
 rule in all cases of trespass. For the
 uncertain damages are reduced in compensation which takes away the

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Exche. 118. This is the case the subsequent damage has ensued - satisfaction not recovery. Judge Rogers reason is, that in case of tort damages being uncertain, Plaintiff might, suitably actuate from the hope of obtaining more - be case of contract the sum being certain, he has no such inducement of the original defect is solvent.

Exch. 319. Latham. The rule holds even if further injury ensues after the first recovery - for the battery is the gist.

Exch. 320. To all continued trespasses committed before the date of the first writ. In this act as in all trespasses, if the

Exch. 317. injury is done by several the Plaintiff may sue all or

Exch. 318. Latham. Release to one is a release to all.

Exch. 321. 320. If two or more are charged jointly & are found jointly & severally guilty, i.e. each guilty of all, they can't sever damages even though they sever in their pleadings - then I think the

Exch. 317. Latham.

Exch. 318. Latham.

Exch. 320. To if judgment goes against both by default then

Exch. 320. damages cannot be recovered

In one case, if Defendants sever in their Pleas, one pleading the general issue, another a justification or

Exch. 320. 321.

Exch. 320. 321.

Exch. 320. 321.

Exch. 320. 321.

Exch. 320. 321.

Exch. 320. 321.

Exch. 320. 321.

Exch. 320. 321.

Exch. 320. 321.

Exch. 320. 321.

Exch. 320. 321.

Exch. 320. 321. Verdict may sever, then the several Defendants are supposed to be equally guilty according to Exch. 320.

But in these cases where the damages ought not to be given

Exch. 320. i.e. where Plaintiff may present Defendant from another Defendant or

Exch. 320. taking error, by committing one taking judgment for one and

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11 Geo. 4th

Poul. 20.

There can be only one crown in these cases & crown may
go either wth the one, or upon the an^d is assessed on wth all.

But 20 Geo. 3. 1785
Bent. 19 4 Geo. 4th

Off may arrest judges' in these cases if he is elected
or he may enter a writ prosequi as to one Def^t. &
take judges' wth the other for the one assessment.

Exp. 110.

Geo. 3. 880.

It is said that the Jury may in these cases find one guilty
as to one part & another as to another part & assess damages
severally, & the finding will be good wth a commitment.
It is supposed to be the gen^l issue - Here there are not found

11 Geo. 5th 1790

Geo. 3. 29. 51. But 20

to be jointly guilty, unless the diff^y Def^s are wth the diff^y
parts at diff^y times. This qualification adopted in law

Therefore where the injury is one entire battery, the Jury
cannot sever, because the wrong is indivisible - First
rule applied in law was that if two or more jointly charged
& found jointly guilty, i.e. each of the whole damages can
be recovered.

11 Geo. 4th

8 & 9. 180

If one is compelled to pay the whole, no contribution
in Law or Equity -

In Reg. it has been held that a writ prosequi
Def^t 110. 70. But 20. or non suit as to one of several Def^s before judgment
Bent. 19. Geo. 3. 1785. wth the others, it discharges the rest as to all, it operates
as a release to the one - practice otherwise in law.

And in Reg. & Law. It will give off leave to strike
if one of the Def^s from the declaration with Li. consent
& then prose & implead him as a witness.
The rule is, when the other Def^s plead for him as a witness
the Pt will sever him, if no evidence at all is produced wth him,

Assault & Battery

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Because a Jiff will sometimes make a person deposit for the purpose of preventing his testimony for the other side. He is greatly excited first - & then is a good witness.

All causes of acts arising ex alioquin, a letter-
 head. or case be the remedy, one several, they may be
 joined, tho' not necessary—

The Jury may if they please vary from the valuation & find only a part guilty, & not guilty, as to the residue. No necessity for this; they may assess damages only, & damages proportioned to the real value. This is com^o to Lark. gently—

Increasing more than it is in issue is not. If there has been a mayhem, the Jury or we increase the damages at their discretion; & tho' no mayhem is expressly laid in the declaration, provided the Jury believe a mayhem, or reports it when he is a member of the Ct above - But it must be done in Bank. If must be present when the motion to increase is made - the manner of wording should be laid in the declaration - This practice of increasing damages is founded on the rule, that in appeal of mayhem, 'mayhem or not, is to be tried by inspection' - It must be proved to be the same hurt for which the damages were given by the Jury -

1 Mic. 5.
2 Liv. 108.

22. 332-3

Febr. 322.

2. Lu. R. 148

Oct 23

Burl. 9.1. Ref. 322.

Comp. 322. Ex. R 170

34. 333.

1 Mo. 5

Post 120 Lm 1 224

C. n. n.

1864

4 Bar. 25-

1 Bank 34.
L. 25. 15

2001 431

Assault & Battery

By Stat. N.Y. this act must be lost within 2 years.

For the law relative to Indictment for Assault & battery vide

(Hawth. C. C. ch. 62. sec. 1. 2. 1 Barb. C. C. ch. 8. sec. 1.)

Jones on May The party injured may proceed at. l. p. l. by act & indictment for the
1 Barb. C. C. 191. same assault for the public & private injuries are perfectly distinct.

The action of Slander

Slander consists in maliciously defaming a person

4 Bac. 483. 1st by words written or spoken which tend to injure him
4 Co. 14.
Bul. 9. in point of personal security, connections, office, profession
3 W. 123. or interest.
Esp. 496.

5 Co. 125^b 2^d Without words, as by figures, pictures, &c of the above tendency
committed according to the usual division in three ways viz
1st by words; 2^d by writing; 3^d by signs, pictures, &c
Slander by words is of two kinds - 1st of words in themselves

1 Bac. 483 actionable. 2^d of words not actionable in themselves but becoming
494. so by some special damage sustained -

2 Co. 14 The gen^l rules relative to oral slander apply to written &

But t. of oral. Falsity & malice must concur
viz Definite; malice what - (Chast.)

Gen^l rule that for words in themselves actionable.

Pl^{ff} may recover on merely proving the words, some exceptions.

4 Bac. 483. For damage is implied; & such words prima facie import
Bul. 6 malice; rebutted by proving that they were spoken under cir-
17 D. 1111 ag-
cumstances which exclude the inference of malice (2 Co. 14)
Ld. 1111

Classes of actionable words - 1st those which bring the
Finn. L. 115, person & whom he into danger of legal punishment

Slander

7th. 128. 2^d Tending to exclude from society - 3^d Injuring one in his
 Trust. 2. 185-6 Trade or Profession. 4th Tending to injure one in his office

4 Bac. 483. 493

1st Bringing into danger of punishment of the false

4 Co. 15. 4 Bac. 483. 493

Geo. 4. 638. 602.

609. 1 Roll 65-6. 49. 69.

77. 1 Wils. 177. 180.

4 Geo. 20. Geo. 4. 114.

words change a fact which would incur corporal punishment

the words are clearly actionable - 4. 4. 4. Changing the name

Jealousy, perjury, Forgery &c.

According to this classification words may be actionable

per se tho they do not injure one's reputation, & they may

injure his reputation & yet not be actionable -

4 Bac. 480.

Words changing what would subject to transportation

10. 45.

1 Roll 36. are actionable. So, to casting

10. 45. 1 Roll 46.

Words changing what would subject to imprisonment

10. 45. 1 Roll 46. What are actionable - imprisonment being corporal punishment

210. 4 Bac. 484. 4. 197. Geo. 2. 315. Trust. 2. 185. 1. 185. 46. 1 Roll 46. contra, 4 Bac

487. 1 Roll 181

That if Wils. mentioned in 18th is subject to imprisonment

10. 45. 1 Roll 46. is subject to imprisonment

Words changing what would subject to a fine are

474. 108. Case of

10. 45. 1 Roll 46. 187. 188.

actionable or not, as the fact changed is information or not

10. 45. 187.

So decided in 10. 45. 187. There is there any such rule in Eng.

10. 45. 187. That to charge one with any crime which makes

4 Bac. 485. 187. 188.

10. 45. 187. 188.

the person spoken of liable to prosecution is actionable - 10. 45. 187.

10. 45. 187.

10. 45. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.

Slander

- 11th ed. charging what would subject to punishment must
 2d. 573.
 1887. 1107. 1887. 57. 23 to be actionable charge a criminal fact committed: charging
 218. - Com. 191. civil intentions not in fact - ex. gr. "He gave I. L. counsel to
 2d. 491. kill me to be not actionable. So "I expect to see him indicted
 2d. 156. for stealing" not in fact. So "He is in goal" for stealing
 1887. 1107. a horse to be not actionable. words of a similar in fact. Ridden
 2d. 497. - after verdict - 2. 1107. 300 or 300.

- Subjective words under this head are actionable
 or not, as they presuppose an act committed or not. ex. gr.
 2d. 417. 2d. 156. Seditious, libelous, malicious, to not in fact; "perjured", in fact
 13th.
 1887. 1107. "He is forsworn" not actionable unless it be added "in a
 2d. 156. judicial proceeding" or "in such a court". 3. 1107.
 1887. 1107. To call one a thief or after a quod pardon is actionable
 2d. 156. 1887. 1107. pardon clears from guilt. So if the particular theft had
 been pardoned -

4. 1107. 1887. To charging one with having committed a
 2d. 156. crime of which he has been acquitted - there is no
 danger of punishment.

- If the words charge a crime which it appears could
 not have been committed, they are not actionable: ex. gr.
 2d. 498. 2d. 156. "he has killed I. L." It being still living -
 2d. 5

3 Hander

But this matter may be pleaded in Eng. cannot
be given in evidence except in mitigation of damages

4 Bac 570. 585 pl 278. If to the words charging a crime, a description
Lid. 104. 1 Rde. 51. not corresponding with the crime charged be added;
Cro. Jac. 674. 16 Co. 13. 14 the words are not actionable; e.g. calling one
10^e 10^e 571. 577. 6 Rde. 5. a thief, because he had committed a certain act
which amounts only to a trespass &c

9^e 573.
as in fact.

But charging a crime so that the prosecution
for it is barred by Stat. of Limitations at the time
of the words spoken, is actionable.

10^e 571.
Cro. Jac. 375.
10^e 580.
Lack 674.
4 Bac. 577.
10^e 571.

If the punishment of the crime charged is in
the alternative the words are actionable, if the
punishment may be corporal &c e.g. charging one
with being the father or mother of a bastard which
has been chargeable &c at common law for the father or
is not liable to imprisonment unless he discloses
the parties.

Coh 498. 9^e 103. 2^d Tending to exclude from society, as to charge with
Coh. 1. 144. 1 Rde. 44. Having a contagious disease 4 Bac 468. 1 Com. 184.
10^e 217. 1 Co. 205. 4 Co. 17^e

2^d 10^e 113.
2^d 10^e 473.

But the words to be actionable under this head
must charge a present disease - seems to be only
less Co. 214. Cro. 1. 437.

12 mod. 248. 4 Bac. 588.
Cro. Jac. 144.

Under this head adjectives used in the present tense are actionable.

Slander

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11 Dec. 1890. 3^d Tendency to injure one in his profession or
 1 Conn. 182. trade & q. Calling a Lawyer a Knave is actionable
 104. 498. 384. 1890. 1 Conn. 182. 1 Kent. 28
 1 Roll. 28. 1890. 1 Conn. 182. 1 Kent. 28

1 Kent. 37. 1890. To be revealed in clients secrets. Conn. 182

104. 498. 384. 1890. To be revealed in clients secrets. Conn. 182

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Ed. 1867. When the words spoken do not of themselves import
 the 618. a have been spoken with reference to the official
 the 88. 428th. 12.

Law. 280 Character, a colloquium is necessary. 1000 of the
 Bro. Dec. 557 words themselves do import a reference to the official
 1 Dec. 280.

Character - e.g. He is a knavish Justice To genly
 when the words are not actionable, except as they
 refer to some collateral thing which constitutes the

ground of action & to which the words themselves
 2. 308. 307 to whom the force of them refer, an amendment of a
 501. 2. Colloquium is necessary. e.g. to say of one who

is a knave, "he is a cheat."

Colloquium is by Exp. 514 to be necessary where
 a knave is called a Bankrupt. See, no authority cited

4 Bac 515 pl. 55. by Exp. & vide 1 Dec. 280. When the words were "He is a
 Lascivious Justice" & Colloquium not necessary

Roll. 514. 1000 To calling a Physician no colloquium - To saying
 30. 270 of a knave "do not deal with him. He is a
 2 Dec. 82 cheat" is colloquium not necessary
 Ed. R. 1480

4 Bac 514 pl. 36 "He is a knave" compounded, not necessary
 515. 1000 2. 240
 Exp. 502

If the words themselves do not show their own
 application by designating in express terms, the
 subject matter or the person, incusor is necessary
 e.g. He, meaning the officer &c

4 Dec. 17th

Stander

4 Bar. 510. 4 Co. 17th Rule - "Nothing which would otherwise remain uncertain can be removed to certainty by innuendo.
Not accurate - more accurately than - any thing
which taken in connexion with all that passed
before between the parties to the conversation
remains uncertain cannot be made certain by
an innuendo. It can make certain only
by a reference to something said before which
is certain. -

4 Co. 17th / Rule 73
Lamp. 684.

An innuendo therefore can never extend
the meaning of words beyond their proper import
as gr. It must mean I mean a bar full
of corn. But if it had been averred that Defend-
ant had a bar full of corn & that in a discovery about
that bar, Defend. spoke the above words, innuendo
would be good -

Lamp. 684. 275.
Exp. 511. 4 Co. 22nd -
Sec. C. 834.

To "he stole half an acre of my corn." innuendo
"the corn which grew on 1/2 an acre after it was reaped
is bad -

Sec. C. 428.
Rule 82 pl. 1
Lamp. 684

Where an innuendo is unnecessary a bad
one is superfluous. as gr. He was charged innuendo
in a certain bill exhibited in such a let. the innu-
endo is bad - but the declaration is good - So the
foreman himself innuendo, in such a let. is imperfect

4 Bar. 915.
1 Rule. 83.
Sec. C. 609

Stander

Encl. 5th. 46th pth. As to the person is uncertain. From the words published,
1st Ed. 52.
the 3rd 49th immensio cannot make certain; ex. gr. one of the parts of
1st Ed. 2-25.

J. H. is a thief, 'imundo the stuff not good

When an act is not for words tending to injure

Bsh 514 & in these, profession office & it, must appear in
Bsh 240. the declaration that the Off was at the time of the words

bro. G. W. H. 14 wrote. spoken I sent a trade to That the P. J. has been a

Car. Ep. 205.

Content 1/Box 5/3.

Gen. C. 273. Spels. 159.

Dec. 9, 1892 Dec. 6, 1892. I did not see ~~that~~ he shall be presumed to have
been a trader at the time { in stating the special damage all
involvement & certainly should be used;
that it ought to be presumed. But. H. P. G. & L. Dec. 10, 1892.

Ex. 95.

14a. 299.

So in case of a trader that "he gained his living by buying & selling" necessary {the physical damage must be the legal & natural consequence of the unauthorized shelling; for an illegal consequence viz a tortious act not reprobated by the law.

Dep. Sec. of State, - 22. Works of Heat & Gravity D to be not action at the
1 Jan. 14. 3 Feb. 185.

Then: Then they import no definite charge, is "Rogue"
Rascal, villain &c. To perhaps when wantonly provoked
by Alf - sees of Defect in a harpison of unpurified
and other actionable words -

actions of Hæmæa recently rare - afterwards frequent
- mitioni uili adople - Nat 21 Jac. Peruviani -

10 mod 198. Kib. 12

Feb. 5-11. Bud. 5-

4 Bac 497.505.

low. 688.

275-

no. 6. 865.

德政. 理. 6.

Rules of construing words in mitivini sense
I now expounded - They are to be taken in that sense
in which they would naturally be understood by the hearers

Handicrafts made in a foreign language actionable
if understood by any of the Heavens - seems not. 4 Bar. 40. 40. 40.

Slanders

Exh. 41 All the sentences as to be taken together - for the subsequent words may explain the former, so as to fall short of slander - as in the case of a description added at report

4 Co. 19^a Bul. 4
2 mod. 159.

Exh. 51^a It will not do violence to language to find an innocent meaning. e.g. "your husband died of a wound you gave him" Supposed the wound might have been given by accident

Gill. R. 243
Bul. 4.

Exh. 51^a So a forced construction not given to make words actionable which bear an innocent meaning - "He is

Exh. 114 a com^o maintainer of virtue" of a Lawyer

Exh. 51^a Gen^l rule: The ^{words} must, to be actionable, import a direct charge of a slanderous nature - not by inference e.g. "I. L. got his money by swearing & forswearing" not actionable -

Exh. 51^a Bul. 4
1 Com. 185
1 Mod. 47. 445.
Exh. 100
1 Com. 185. Note 50-1-5. B. "I will prove that he poisoned J." - So "when Geo. was 509. 1 Ed 781. 1 Bul 276. will you return the sheep you have stolen?"
1 Com. 185. Note. 45.
2 Co. 155. 12 Co. 134. actionable.

1 Com. 191. 4 Mac. 5. 2. 318 In declaring it is usual to state "Maliciously & maliciously" e.g. "maliciously" seems not necessary - In if the words are not in themselves actionable - for malice is implied

Exh. 273. by 35. No. 4.

Slander

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Rep. 510. a direct imputation, that the words were false not
 Bul. 8. necessary: Calderly published is sufficient

1 Com. 195. Declaration usually states that it is of good fame &
 this is not necessary

4 Bul. 512 alleging that the words were spoken "publicly &
 2 Co. 2. 267. 480. publicly" is not sufficient saying "in the hearing" or "in
 Rep. 517. the presence of diverse persons" is not

"Malice" is any corrupt or wicked motive

The gentle, actionable words prima facie imply malice
 the presumption may by circumstances be rebutted: ex. gr.

2 Co. 502-3. in case of confidential communications which exclude prob
 4 Co. 91. ability of malice - as character of a test given by a forsworn
 2 Co. 91. master or mistress on a reasonable enquiry, the false
 1 R. 110. malice must be proved - vide 3 Bos. 594. 3 Co. 201. -
 1 Com. 174.
 Brown. 2422.

To whom one confidentially & by way of warning
 to another of a leader "he will be a Bankrupt" &c

Rep. 503. the words were spoken not actionable, the special damages
 Bul. 8. 350R.
 20. 1. 2. 3. 4. were stated.

Use of words used in the course of legal proceedings: ex. gr.

Rep. 503. allegation in articles of the - then if the tr applied to
 4 Co. 14. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.
 230. has no jurisdiction of the matter charged.

Rep. 517. Bul. 10. The retelling of slander fabricated by another gen. actionable
 4 Co. 133-4 2 Co. 2. 267. 480. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.
 400. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20.

4 Bul. 498. But circumstances are carefully to be examined as to
 4 Co. 14. Bul. 2. 10. intent - thus within the spirit & concern - said

Standards

1 Rev. 132
 Cal. 518. Bro C. 38.

"I have heard that J. I. is to be hanged for stealing in
 action - is not -

4 Bar. 498.
 Cal. 518. Bro C. 38.

Words extracted by posing a provoking question.
 My self, himself, not actionable exp. "Have you say I
 am hanged?" "Yes, if you will have it" -

10. R. 110. 125. 82.
 Cal. 518. Bro C. 38.

The genl issue is in Eng. a denial either that
 Deflt spoke the words, or that they are actionable. For
 want of malice, as in the case of confidential com-
 -munications - supra.

In Lon, the genl issue includes all defences -
 even that the words were true or otherwise justifiable
 except not as arising from some act of the off
 amounting to a discharge -

10. R. 110. 125. 82.

The genl character of self as to the crime
 charged by the words may be proved in mitigation
 of damages - but other particular acts of the same
kind as those charged cannot, where the charge is of
 particular acts - even where the charge is general -

10. R. 110. 125. 82.
 Cal. 518. Bro C. 38.

In Eng. a special justification cannot even
 be given in evidence under the genl issue
 exp. that the words were true -

10. R. 110. 125. 82.
 Cal. 518. Bro C. 38.

In Eng. the truth of the words cannot be given
 in evidence even in mitigation of damages -

10. R. 110. 125. 82.
 Cal. 518. Bro C. 38.

The truth of the words is always a good
 justification.

Slander

Exp. 505-18. 1. *Quid* 31. I, our witness in testifying charge another with
 4 Bac 518-18. 1842. *Quid* having testified falsely, no act lies.

- 207 -

So if the words were spoken by Deft. as counsel
 4 Bac 518-476 in ~~the~~ cause in some cases it is good defence or
 - 4. Sub. 10 justification - in some it is not -

Exp. 517. 1844. Rule. when the words (the false &c) are pertinent
 4 Bac 498-518 but 90. is the cause (& suggested by his client) he is not liable

But if the words are impertinent (the suggested
 by client or if being pertinent this were not suggested &c)

2. 4. 29.

See. Lac 20-1.

Rule 10. But 517.

1. Rule 87. 25. 1844. between their being suggested &c & not suggested &c
 1. Rule 83-20

4 Bac 498.
 Rule 328. Rule 87-10.
 De. If he has been decided that for the purpose of
 mitigating damages in favour of a client
 an advocate may use slanderous words, not

De.

pertinent &c -

Pr. 402. 4 Bac 498.

In a subsequent case Golden that an attor-
 - nely is never liable for slanderous words in defending his
 clients cause - It is his duty - presumed that he was influenced
 by client &c De. But writers do not mention the two last
 cases.

Now there are two counts one charging words
 actionable & the other words not actionable, & on a
 plea to the whole, entire damages are given, judgment will

8. 102 564

1. 4. 25. 1844.

1. 4. 25. 1844.

1. 4. 25. 1844.

1. 4. 25. 1844.

he wanted &c a venire de novo awarded - See if the words

are all -

Slander

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Exh. 520. In action for words in themselves actionable special
8 J.R. 130. Damages must be stated. This is the gist.
Pul. 6-7.

To make the words in themselves actionable, they may state &
prove special damage - but in this case he can prove
Pul. 7. no other special damage than what is stated specially,
tho he may prove gen^l damage, as loss of customers

Exh. 7, Exh. 520. in gen^l but gen^l damage being said. Per.
8 J.R. 130, 131, 132, 133.

What amounts to an allegation of special damage.
see Ex. 500. Pul. 7. Tit. 65. 290. 8 J.R. 130. 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

But where the words are not in themselves actionable
the innuendo is necessary to make them so.
1 Cor. 148. In innuendo that special damage might be proved under
by Pul. 4 by innuendo an amount of gen^l damage -
Exh. 520.

Immaterial what the false words are, if they
are malicious & occasion special damage, e.g.
1, Bac. 596. calling a single woman "incontinent" "whore" or "whore"
4 Cor. 17. which she lost a match -

The case of Hausering & title (as it is called) as
calling an innuendo apparent a bastard it is sufficient to show
1, Bac. 501. Exh. 213 remote or probable damage (no act. lie. if Exh. 213
4, Bac. 17, 484. 1, Proh. 38
1, Proh. 38
1, Proh. 38 claimed the title as innuendo - e.g. Proh. 38, Proh. 38 had
signified a design to diminish it - Proh. 38 also
1, Proh. 38 - Exh. 501. that the words tend to diminish it -
to be decided in favour of youngest son -

Exp. 579.
Pub. 7.

One recovery of damages is a bar to another just for the same words - whether the words are actionable per se or not.

Acts of Slander in gen^t Plff after proving the words stated may give evidence of other words of a similar kind spoken at another time, & even after the act is set.

Exp. 578. Pub. 10.

Laid to be an aggravation of damages

But this cannot be the principle - for 1st words not actionable may then be proved - 2^d words actionable (which may also be then proved) are a foundation for a distinct action - 3^d Words spoken after action just may be then proved - the true object is to show malice.

Pub. 7. Exp. 520
See 571.

But when words spoken at another time are given in evidence, under this rule, Def^t may prove them true to rebut this inference.

Exp. 520 1st & 2^d words only. Pub. 10 with
Exp. 578

If these words not stated & spoken at a diff^t time are proved, they must be similar to those charged.

Decided in some exp^t proving like words, spoken at diff^t times, to show, malice - decided many times per se on

Exp. 579.
Pub. 75.

2^dly. Stat. Limitation as to slander two years - From the time of uttering it - Stat. extends only to actionable words - For Stat. limits to 3 years does not extend to words not actionable - Formerly necessary to prove the words precisely as laid - not now to prove the substance. The name must be the same. The persons of promotion must not be changed.

Slander - Libel

a Joint actⁿ of Slander by or wth two will not lie -
 2 Burr 984. Esp. 504. Publ. t. 1 Com. 195. 49. 19. 4 Burr 511. 49. 19. 21.
 not a tort which supposes an act Publ. t. 3 Bl. 117 vide 1 Com.

II. Slander by writing or Libel

As to the nature of Slander by writing 1. Platonian
 word would be actionable if spoken, are clearly so when
 written -
 Esp. 504.
 3 Bl. 120.

But written Slander is a more aggravated
 injury, as having a more extensive circulation
 3 Burr 490
 3 Bl. 120. & being always deliberately committed.

But many words which if spoken would not be actionable, are actionable if published in the way of a Libel. Esp. 504 says it differs from Slander by words in this only, that it is delivered in writing or printing. vide also 3 Bl. 120.
 Perhaps his meaning is that words if spoken could not be slanderous, are not Slander when written tho they may be actionable as being libellous. If this is not his meaning the rule is incorrect.
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A Libel is any malicious defamation of a person (living or dead) made public by writing or printing to

excite resentment, or to expose the object of it to odium,
 4 Bl. 130.
 3 Burr 490. contempt or ridicule. This definition seems chiefly

to have been framed with reference to libels considered as a public offence: as, e.g. Dead person, exciting resentment -

3 Bl. 125. For libels on grant there are two remedies
 3 Burr 492. 498. by indictment or by action

2 Bl. 126. It is said the gen^l rules relating to oral slander
 Ita. 898. apply to cases of Libel, as civil injuries. In do the
 Exp. 504. negative rules as to oral slander apply? ex gr.
 3 Wils. 403. To charge with crimes &c.?

Now if some bona fide with a view of maintaining
 a fact in the public making it is attracted as a charge
 of bigamy. 4 Cr. N. D. C. 191. But nothing is construed a Libel which
 is necessary in the regular course of proceedings

Coch. 505. in Ct of Justice - ex gr. in a declaration, complaint
 2 Burr. 807. affidavit &c. See Williams v. Park 503. Circumstances necessary to be declared in & by witnesses
 not justifiable to publish if they wound individual feelings - do do.

Now ex 525. Act lies not, for publishing a true account
 See vide 7 Bask. 503. of a trial in a Ct of Justice, the Offs character is injured by it

17 J. 148. 4 Bl. 150. Now 253 2 and 108. In a civil act, the truth of a libel as of
 11 mod. 99. 4 Bl. 150. 4. 3 no 125-5. Bal. is a justification.
 8. 9. Louisa own testimony 4 Bask. 510. words not written,
 3 do 496. J. C. vide Delva N. D. 929.

Secus, on a criminal prosecution. 3 Bl. 125-5.
 4 do. 150. Ita. 498. 5 do. 125. The falsity aggravates the guilt.
 4 Bl. 50. 2 McAl. 648. nor is the bad reputation of the
 person any justification. 2 McAl. 649.

Exp. 504. 2 Bl. 405. It is essential to the constitution of a libel
 5 mod. 103. 2 McAl. that it be published - But writing it originally
 - 542. seems to be sufficient - tho dictated by a third person

Exp. 504. 9 do. 191. But merely transcribing it, without showing
 it to any one is not a publication - but it
 is evidence of a publication of the libel he made.
 2 Bl. 419. public - In as to the first rule -

But composing it, procuring it to be composed;
reading it after he knows the contents - delivering
 it to others, after he knows it amounts to publication
 in Law - For to be wilfully or wrongfully
 instrumental in making it public is to incur
 the guilt of actual publication -

The sale of a Libel by a Bookseller or other
 prima facie evidence of a wilful publication
 comes to on the Bookseller - So of a sale by Books

2 N. H. 634. Lawyer -

2 N. H. 583 2 B. 2 138. So of printing, i.e. prima facie evidence

To sending it to the press for publication, is
 a publication in Law, for the person sending
 it is guilty of a publication when it is printed -

Repeating it in the presence of others

is a publication -

2 N. H. 623. mod 197 113.

2 N. H. 150. 1 B. 196.

2 B. 197. 1 B. 197.

2 B. 197. 1 B. 197.

2 B. 197. 1 B. 197.

2 B. 197. 1 B. 197.

2 B. 197. 1 B. 197.

2 B. 197. 1 B. 197.

2 B. 197. 1 B. 197.

2 B. 197. 1 B. 197.

2 B. 197. 1 B. 197.

2 B. 197. 1 B. 197.

2 B. 197. 1 B. 197.

2 B. 197. 1 B. 197.

(But repeating part of a Libel in manuscript

without malice has been held to be no publication.

Writing it to a person who is the object of it &

is sufficient for a public prosecution

Exp. 508. If the letter was a friendly exhortation is it
safe for a public prosecution? - In - I
conceive it clearly not actionable - &c.

30H. 125. Are all libels which will support a
30Bac. 492. public prosecution actionable?

2 H.M. 532 argu. Words written on many times actionable
13os. & 331. 14and. ^{see also marginal note, p. 299.}
No. 2 H.M. 513. 1 mod. when if spoken they would not be - 3 Bac 492.
54. 1 D.R. 752 argu. 46. 879.

Writing & publishing any thing falsely
3 Bac 492. which makes a man scorn or ridiculous
2 Wils. 403-4 in actionable - to say quite just 'rogue' or
1 Bos. & 331 'rascal' & sup

To disturbing domestic peace is said
by Exp. 505 -

1 F.R. 148.

Writing a printing of one that he is a
2 H.M. 531. "Swindler" is actionable. False if "spoken"

The offence & the injury of a libel are
considered as repeated in every stage of its

1 F.R. 571, 574 circulation - therefore the venue is not

Wils. 148.

Changed in Eng - except where the writing & publishing are
in the same county as charged - 30H. 125, 30B.
confined to the same county 1 D.R. 752. If the libel is sent out of Eng. in a
letter, the venue may be changed into that place where the letter was written 3 F.R. 652.

Slander - without words

In the Slender in the act - Here the printing expresses only the initials, &c.
 vide Slender N.S. 933-2-

3 Mac. 493. where in two letters of the name of the person against whom it is intended, or signed names - it is a libel - the manner being such that it must indubitably refer to the person. See case in Slender N.S. 927. - also notes however from Wentworth 79.

1 Hawk 194

Esq. 506.

2 Wils. 470.

III Slender without words - or libel with

Esq. 511. writing - as eg. raising a gallows before ones door & hanging him in effigy -

3 Mac. 491.

Representing one ignominiously by painting

- Here the application of the Slender must always be made by innuendoes & overments

Also Special Damage must always

Esq. 511.

3 Mac. 125-6.

be shown - This kind is not actionable in itself -

Less not understood to be levelled at the Off -

By Stat. Con. Common Slender is punishable as a common offence - Fine not exceeding 834 & 6d Learning - never yet inflicted - Defaming Lord magistrates to fine imprisonment & disfranchisement -

L. 1000

Action of Trespass vi et armis

for injuries to person & property -

"Trespass" in its most extensive acceptation at Common Law is any transgression of Law short of treason felony & misprison.
 7 Bl. 206.
 Jacobus Dictor of treason or felony - These not considered as a word of technical
 5 Bosc. 187. in fact, but any violation of any Law -

The word as now used in Law denotes in its general sense any misfeasance committed to the injury of another's person or property - The word in its most appropriate sense imports only injuries by force to the real or personal property of another -

The Tresp. now to be considered comprehends all forcible injuries to the personal property of another - The rights of personal property in personae are liable to two species of injury -

1st Abuse or damage, while the possession of the owner continues
 3 Bl. 445. 2^d Amotion or deprivation of possession -

1st of Abuse is of personal property without altering the possession - e.g. Poisoning one's cattle - hitting his beasts or using unseasonable words which lessen the value of his chattels, falls under the description of injury
 1 Bl. 159. (Tres. &) Tindal's case &c.

The remedy in these cases if the act is accompanied with force & is immediately injurious is Tresp. vi et armis
 5 Bosc. 187. 2 Bl. 445. If case is not when Tresp. is the proper remedy, judgment
 5 Bl. 1. 17 Feb. 1798. 6 T.R. 125.
 2 Mod. 171. See C. 14. 1798. will be awarded & vice versa.

2^d of Amotion &c. - This species of injury so far as it is remediable by Tresp. vi et armis, consists chiefly in an unlawful taking

Trespass to person & property

309

5 Ann. 581. If one having taken a distress lawfully refuses to deliver it on wife's demand - Distraint of goods &c -

1 Roll. R. 130. Here the injury is remedied by case exception to the 5 Ann. 182.
Lath. 109. Ed. 662. rule in the case supra of the thief who omits to return &c

2 Roll. 516. Where the party gives the licence under which the
Peck. 111. 171. original act is done, the other can never be made a trespass
2 Leon. 512. by relation - ^{But} the Law will ^{not} punish in case
8 Leg. 118th.
2 B. & C. 156.
10 Pl. 92. 7.
B. & C. 225.
Peck. 111. 171. of abuse the very act which was authorized by itself.

5 B. & C. 162. 122. yet it will not allow a party to treat that as unlawful which he himself made originally lawful - e.g. an unlawful seizure or abuse by bailiff &c - 5 B. & C. 581 -

Moore 248.
5 B. & C. 162.
Peck. 111. 171.
Co. Litt. 374.
12 W. 136. This rule (com.) denied in 5 B. & C. 162. pl. 20. If indeed bailiff destroys the thing trespass is said to lie - For he extorts what the bailiff &c but is not a trespass at initio & converse -

Peck. 383. 472. 489. To maintain this act Off must have ^{actually} possession ^{*} of property
15 East. 485. 7. alone is not suff. - e.g. Off let a house & furniture to A.

12 R. 450. Off finding the key, locked an iron on the furniture -
page 306. 7 T. R. 9. Now holden that Owner will not lie -
1847 1848 175-6.

But construction however in support of a stranger

154. 2 do. 467 - 1 do. 244. 1 Leon. 577-8. 5 B. & C. 182. as bailiff 2 Roll. 559. 17 R. 520. 480. 489.
16. 1004. 5 B. & C. 123.
18. 139. 5 B. & C. 164. 5 B. & C. 175. To justify any person having the genl property may as a stranger
B. & C. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200.
1 do. 244. 2 do. 245. 1 do. 246. 1 do. 247. 1 do. 248. 1 do. 249. 1 do. 250. 1 do. 251. 1 do. 252. 1 do. 253. 1 do. 254. 1 do. 255. 1 do. 256. 1 do. 257. 1 do. 258. 1 do. 259. 1 do. 260. 1 do. 261. 1 do. 262. 1 do. 263. 1 do. 264. 1 do. 265. 1 do. 266. 1 do. 267. 1 do. 268. 1 do. 269. 1 do. 270. 1 do. 271. 1 do. 272. 1 do. 273. 1 do. 274. 1 do. 275. 1 do. 276. 1 do. 277. 1 do. 278. 1 do. 279. 1 do. 280. 1 do. 281. 1 do. 282. 1 do. 283. 1 do. 284. 1 do. 285. 1 do. 286. 1 do. 287. 1 do. 288. 1 do. 289. 1 do. 290. 1 do. 291. 1 do. 292. 1 do. 293. 1 do. 294. 1 do. 295. 1 do. 296. 1 do. 297. 1 do. 298. 1 do. 299. 1 do. 300.

5 B. & C. 577. The master of cattle may maintain trespass against a stranger
2 Roll. 557. 125. for taking them &c -

Impersonation of soul to which one has a right for a particular purpose, subject to this act. 5 B. & C. 175.

1 Com. 12. 1843. 32.
3 Com. 354. 1844. 31.
Exp. 550. 1844. 1845.

The Resp. for goods, taken belonging to time, Resp. should
but the defect is pleasurable in abatement only

1 Com. 582. 592. 1844. 1845. It seems that at Com. Law Resp. does not lie for an
1 Com. 91. 1844. 1845. act an. amounting to felony or Robbery, Grand Larceny or by
yels. 1844. 1845. 375. reason of merger - 1 Com. 223. 1844. 1845. 1846.
2 Com. 557. 1844. 1845.

1844. 1845. 1846. The Resp. authorities are contradictory as to the application of this
375. 1844. 1845. 1846. principle - merger is founded on forfeiture it seems
1844. 1845. 1846.

If a Resp. or Deputy takes the goods of one on espcon
1844. 1845. 1846. apt another, he is liable in this act -

In declaring the goods must be ~~cont'd~~ with convenient
1844. 1845. 1846. certainty - "Diverse goods", or "Other goods", not suff't. not a
1844. 1845. 1846. cause by verdict - for one recovery would not be a clear
1844. 1845. 1846. to another & Resp. could not justify -

But this rule applies only when the act is founded
1844. 1845. 1846. on the taking of, or injury to the goods themselves - not when
the injury is laid by way of aggravation - thus the goods
1844. 1845. 1846. only is suff't - ex gr. Resp. for breaking & entering off's.
1844. 1845. 1846. house & spoiling his goods, is suff't. even on special
1844. 1845. 1846. demand -

1844. 1845. 1846. Resp. for breaking & entering his house & expelling
1844. 1845. 1846. Resp. - expelling is only aggravation, unless off's. make a
1844. 1845. 1846. new assignment of it as a substantial off's. Resp. save
1844. 1845. 1846. special assignment - 1844. 1845. 1846. 230. -

To a genl description is suff't if it is made particular
1844. 1845. 1846. by reference to other things in the declaration - ex gr. -
1844. 1845. 1846. several keys for opening the house aforesaid -

If justification pleaded by one of several whom the whole
 Corp. 421. that Off had no cause of action - Judgmt cannot go up either
 1 Pa. 610. even if one is defaulted or found guilty - as in a licence
 30th 54. awarded, or gift to
 2d Dec 1519.

Non est in armis not necessary in law.

In Eng. in et armis are words of substance, for at common law
 the judgment in case of forcible injuries was a capias pro fine -
 in others Off paid a sum of money on taking out the original

4 Dec 11. & judgment was a misericordia for fine & amercement
 11th Dec 191. Talk 66. vide 8 Dec 39. opinion after the judgment Corp. 408. 5 Dec 191.
 Dec. 8. 40% Dec. 2. 113. 520. 535.

Now the writ of capias pro fine is taken away by stat.

5 Nov 1 Mary. But if Off pays a substitute or signment
 5 Dec 191. Judgmt in action for injuries with force viz 8th. therefore
 Talk 36. the reason of the rule continues.
 L.D. 985 con.

To contra pacem are words of substance in Eng.
 5 Dec 192. Corp. 408. 11th Dec 93. Talk 66. Talk 636. Croten 4322

Corp. 408. Talk 64. Then defect aided by verdict & shall be amended by
 Stat. 18th 17th Can. 2

How 39. It com Law Book. & Corp. on the case cannot
 be joined because diff judgment are necessary.

Now a capias pro fine is taken away by Stat. 8th May
 yet the genl criticism has still been the difference in
 1 Wils 321. manner of the judgments - Case for misfeasance of
 2 Wils 319. not in et armis & negligence may be joined with Trouer
 2 Wils 322. 12077. Corp. in et armis & Trouer cannot be joined it seems

Tresp. to personal prop^y 12

Just. Bul. says that the identity or difference of the judgment is not an universal criterion - But he says that where the same plea i.e. the same gen^l issue is proper & the

18 R. 274 Judgment would be the same, the causes of action may univer-
sally be joined - By the same judgment is not meant

5 Bac. 191. the same judgment at Com. Law before Just. & B^{ts} & many

14 R. 274. Bro. 20. Contract & Tresp. cannot be joined - 4 Bac. 11.

Action of Tresp. on the case arising ex
delicto, for injuries to the person & personal prop^y

This act lies for wrongs not accompanied with force - For injuries to the person & personal prop^y &

Bul. 74

culpable neglect or omissions - & also for consequential injuries occasioned by acts which are forcible -

ex gr. of the first kind of wrongs: force, malicious prosecution

6 R. 169.

14 R. 122-3. 27 R. 598.

11 mod. 152. 2 R. 399.

1402. 2 R. 2. 825.

154. 153-4. 2 R. 625.

Blame, malicia praxi i.e. unskillfulness in business, neglect

in a servant, officer &c. ex gr. of the second kind; injuries

remedied by actions per quod &c. - Throwing a log into

lit. 636. the road over which one falls & dragging a pig -

3 R. 121. 2 R. 592. 603. Actions of Tresp. on the case are gen^lly founded

3 R. 51-2.

on the equity of the Stat. 15 Edw. 1. Westminster C.

3 R. 123. 2 R. 129. Case was known at Com. Law it seems -

2 Bac. 445. 2 Lev. 20. It lies for mis. mel. or men. force, Bro. Ab. 1st ed. on the case pl. 7. 69. 70. 1 R. 222. 6 R. 375.

It differs in its effect from ass^{lt} in this, that in ass^{lt} the intention to injure must be formally stated in the declaration (but in case it is otherwise) 1 New. Rep. 47. 6 R. 333-5. 3 R. 62-70 And the principal difference from Tresp. is in that in ass^{lt} & contra person are not admissible. Com. Dig. Act. on case C. 3. 4. 2 R. 107. 14 R. 7.

The text gives an act on the case for. From the forms of declaring & com. parlance make it is resp. on the case, i.e. be delict & not be consequence. The text is clearly expressed the distinction between actions on the case & actions of resp. on the advantage of a set of 77 R. 36.

4.9.1. I haven't we call an act on case - Lower to keep in

The case - first class arising ex contractu i.e. depending in contract.

3R. H. 6.2.245. The second ex Aliso, mounding in East. Eng. Lar. knows no
394 & 3R. 208.

such distinction it seems - A Humphreys in Loxf. on the case

1. R. 145. If case is bro^d where Exp. is the proper actⁿ judgem^t.

may be arrested - Reason 5 Dec. 191-3. 4 No. 11. 2 Do 506 -

When the original act involving an injury is with force, tresp. vi et armis lies in some cases & in other cases tresp. on the case.

Rule; if the act is immediately injurious trespass, viz.

2 B. 2. 192.

272. 231. N^o 407.

2 Brev. 114.

Gr. 634.

2 P. R. 1399.

7. Wils. 313. Bal. 26. 79.

3 R. H. G. L. 244.

272.208-9.

672. 123-5. 153-4. 163-5.

500 648.2 B. D. 1055.

1 Corn. 204. 2 Mi. 83. Cr 1

680. 387.

17. d. R. 9.

1. N.O. Ab. title *Lebryn*
Adultery

imprisonment - destroying property with actual force - But

19. if the injury is consequential - treat. on the case seems to

the proper act. The act is usually called hosp.

205. Loss of service from a beating of one's servant child &c

Difficulty in applying the rule:—the effect need not be

instantaneous to maintain temp. When 'tis instantaneous

treph. only is the proper remedy.

Injuries which are not the instantaneous effect of the original force are in some cases remedied by truth. in others by case. — Rule; When the immediate, i. e. the proximal cause of injury is but a continuance of the original force it not

Inresp. on the Case -

being in any measure produced by the voluntary intervention of any rational agent, the injury is immediate, the author of the original force is liable in trespass. For in this case the injury is considered in Law as the immediate effect of the original force. But on the other hand, when the original force ceases before the injury commences the injury is consequential; as is always the case where the injury is produced by the voluntary intervention of rational agents, & in many other instances the author of the original force is liable when liable at all, in case only - when one of these acts is the proper cause, the other cannot be - & this I think is true in all cases. e.g. one shoots a ball which after glancing 100 times hits a servant - the bodily hurt is in Law the immediate effect of the original force - for the proximate cause or ultimate force is but a continuance of the original force or causa causans - Servant therefore has trespass. It's injury is not the immediate effect of the original force it's not indeed the purely physical effect immediate or remote of the original force - the immediate cause of the injury to it is the causa causata the physical hurt done to the hurt - it's proper cause therefore is case - and action by master in such cases.

Trespass on the Case

317

2 R. 274, 831.
2 R. 167-8.
3 R. 645.
Lick. 206.
2 H. 18.

always have been substantially as on principle they ought to be, case. The things have been called Trespass.

A throws a stone which wounds ever & in Hammond's B. here the res ipsa loquitur continues, i.e. it is continued

the doctrine, with any intermediate action ⁱⁿ regent - & B has Tresp. So if it wounds a second time. So if one throws a log into the road & in throwing it hits me.

2 R. 596.
2 R. 628.

But in the case of a foot-ball hit by Pl. Just. case would be the remedy. A ball shot at a mark, glances & wounds, Tresp. Res. So in the squib case. So in wantonly turning out a mad ox - cutting throats, Tresp. Res.

2 R. 464.

In these cases the injury is the physical effect of the force continued & not aided by intervening free agents - But if a

Exp. 599. Log is thrown into the road & it falls over it, case res. - For Res. fac. 466. the effect the physical is not the effect of the original force
1 Cam. 204
Low. P. 10. continued.

1 Vent. 295. Case for riding a wild beast & to include him
1 Cam. 208. which ran over Pl. Just. Here I conclude the Def. was not
2 Low. 172 considered as agent so far as related to the, case. But only
2 R. 879. guilty of the neglect.

If I dig a trench on my own land & direct a water course from my neighbour's the injury is the physical effect of force, yet case not Tresp., Res. So if I erect a
2 H. 174
Exp. 638. weather vane on my house & the water goes on neighbour's case res.

Tresp. on the Case -

here the proximate cause is negative viz failure of the stream.

25.5. 618-9

also not a continuance of the force -

If a servant in performing his master's business commit a direct injury with force negligently, is tresp. or case the proper act as the master?

8 L.R. 125. Salh. 441.
11 W. 472. 1 East. 100.
* 2 H. 41. 422. 5 L.R. 549.

11 W. 1083. 1 L.R. 279.
Burr. 2092.

vide p. 306.

* Case I think - tresp. as the serv^t reason in East's case.

If it wilfully runs his wheel as the serv^t tresp. lies - of his negligence, case. In the act in the former case, not in the latter - 8 L.R. 125. case of mischief by one dog &c. put - Negligent driving a carriage, tresp. If the serv^t does it wilfully with the master's order, master is not liable at all -

1 East. 593.

1 East. 186. 1 Com. 204.

In the cases put of lopping trees, cutting thorns, the force is continued, to one conjoined act of force case of the spout altera - For erecting the spout does not cause the rain, not conjoined - There the force ended before the injury took place -

Cutting down a Load of water, i.e. the dam, is tresp. It is like pouring the water on the P's land one conjoined act -

Where case lies for an injury accruing in consequence of an act with force, the original act may be said to 3 L.R. 412. 1 L.R. 244. I have been some in et amia &c. the the act is case - the mere description it seems -

Nuisance vide pleniora Lelw. N.D. 971.

2 B.R. 892. Whether the original act was lawful or not is not the criterion for tresp.

Ita. 638. He said that case not tresp. lies where the act itself is originally lawful - not correct - as
 2 B.D. 877. ^{as building a house as to overhang another's. 5 Rep. 100 1 Roll. ab. 107 Pl. 18. 2 do 110 Pl. 11.}
 of cutting bells, &c - the meaning is, where the damage is consequential. Tresp. lies not where the wrong

3 M. 154. act is not at the peace - it depends on the question
 5 Com. 582.

2 Roll. 581. whether the damage is immediate or consequential.

1 Bar. 44. 3 M. 52. 122. This act lies for a great variety of misfeasances & nonfeasances - many of them have distinct titles - Treas., assumpsit, Slender &c

A mere neglect for which this act lies on the ground of delictum, i.e. tort, must be a
 But. 74
 Esp. 599 neglect of duty imposed or required by Law. This

rule is universal - ex. gr. a finder of property is not
 Com. Clk. 29. bound to keep it safely - if it spoils thro' neglect -
 He is not liable - 2 L. La. R. 917. Bon. com 252

1 Com. 205 & 9. But for negligence in his office, a Sh. is
 1 Roll. 93. liable - & so are other officers & private persons in many cases. In Com. a Sh. would be liable for not

2 Bar. 965. selling the prop^y taken by process. In Eng. he may
 Salt. 323. return that they lay on his lands, tho' defective employment
 1 Bos. & 365.

Resp. on the Case

A person performing business for another in the line of his profession & doing it carelessly or unskillfully is liable in this act. But if the business was out of the Dept. of profession, he is not liable for want of skill unless in case of a special engagement tho for negligence here. But in case of an undertaking in physic or surgery it seems that unless the persons undertaking make the practice of physic to a comⁿ profession they are not liable even for neglect with a special undertaking. Folly of the patient.

La R^d 214
2 H&C 359.
Esp. 601.

3 H&C 122. 100.
Esp. 601. 1 Com. 165.

It lies in gen^l ag^t one by whose act or culpable neglect the health of another is impaired; ex. gr. It lies ag^t a seller of bad wine which has injured another's health - So for exercising another's health, producing the same effect. But if he did not know it to be bad.

Exp. 501. 1 Roll 405.
3 H&C 122. 1 Com. 166. 170.
4 B. 52. Ante. 135. 3 Acc. 182
Roll 405. 2 do. 5. 3 H&C 136.

1 Com. 110. Implied warranty that provisions sold are good

For mischief done by a dog, as biting & maddened
Two. C. 350. 1 Com. 208. to such mischief, the owner having notice of it,

is liable at Com. Law (not with such notice -
Lutw. 90. Esp. 601. 2. Ingent is arrested if notice is not alleged for

La R^d 566. 1 Com. 208. injuries done by animal, feras nature as bears &c
Two. C. 254. La R^d 109. the owner is liable of course, without notice -
1 Com. 1064. La R^d 562. as to the injury, as to the object, how & what the owner
1 Com. 208. had notice of - scienter not necessary i. e. by a special plea -

Tresp. on the Case.

Is a single magistrate is liable for refusing safe^t bail
when tendered authorities are 1

Rul. 62. This actⁿ lies also ag^t rescuers of one taken on
O. mod. 211. Rul. 311. none proven, in favour of the original Plff. but
8 C.R. 127. 1 R. 302 not in favour of the Plff - Rescue by public enemies only
Two L. 47. 581. C.R. 577. 602. is a good defence. Rul. that Jury may give the whole
Two C. 77. 407. 1 R. 302. act or damage, or less. It is void to prove the
Rul. 62. original Plff. innocent or out of reach of process.
Rep. 657.

Is it lies for rescue of one taken by final
Rep. 610. Rul. 477. process in favour of the original Plff. or Plff.
Rul. 98. because the rescue is not a good return.

Proceeding ag^t rescuers by Plff. discharges Plff.
Rul. 98. 1 R. 399. according to Rep. 610. Is in this case in favour of the
Plff - Plff prevents the Plff from suing the rescuers
+ so discharges him.

Rep. 612. It lies for Plff ag^t the person escaping either on
Rul. 613 none or final process: + then the Plff himself has
Two C. 52. not been sued - Is it lies ag^t the under Plff. in
Rep. 619. favour of the Plff. it seems - but not in favour of
the party unless the escape be voluntary - C. 3.

But the under officer cannot maintain the
actⁿ ag^t the party escaping even tho the Plff
has recovered ag^t him, for he is not liable to Plff.
by law but by contract: injury is to Plff's party, not to under Plff. in law.

Rep. 610.
Two C. 349.

Tresp. on the Case

Attorneys are liable to their act^s for neglect or misconduct.
 2 Wils. 825. injuring their clients -
 4 Burr. 2050.

Attorneys too are sometimes liable to the adverse party
 for dishonest practices - e.g. an attorney knowingly
 3 Wils. 377. took judgment at the Excheq. after the original P^{ff} had
 3 Wils. 185. been non proce^d. Def^{or} has cause ag^t the attorney -
 1 Mod. 207.

It lies ag^t Justices of the Peace for refusing to do their
 duty, provided an injury is the consequence of the refusal
 1 Esp. 618. e.g. Denying bail - refusing to authenticate under
 12 Geo. 323. oaths which require their signature - or writs, depositions
 1 Hawk. 90. &c. - means which require their signature - or writs, depositions
 Hale. 47.

It lies not ag^t a brewer who has sent out a cask
 1 Bos. & P. 388. for not countermanding it on withdrawal, unless malice is
 2 Wils. 302. proved. There is no legal duty on the P^{ff} to countermand it -
 Esp. 58. 2 Ld. R. 909. It lies for breach of trust in Bailiffs - vide Lord & Bailiff

This act lies on the ground of negligence in all cases
 1 Bos. 208. 9. of bailment where the property is injured or lost for the
 4 Geo. 89. want of that degree of care which according to the nature
 4 Geo. 83. of bailment the Law requires - or which is expressly stipulated for -
 1 Ld. R. 20. of bailment the Law requires - or which is expressly stipulated for -
 1 Bos. 208. 9. of bailment the Law requires - or which is expressly stipulated for -
 2 Ld. R. 909.

It lies by Freighters ag^t the owners or master of a
 1 Esp. 623. vessel for goods lost or injured thro' negligence &c.
 1 Ld. R. 440. But the owners if more than one must all be joined as the
 3 Ld. R. 203. right of action is quasi in contract. & 1 Ld. R. 571 contra
 stated in the case of 1 Ld. R. 440 was treated as an act in contract
 between 1 Ld. R. 440 & 1 Ld. R. 440 not being as it stands

Inresp. on the Case

Exp. 129.5. Dec. 20th.

3 Feb. 203. 440 contra

Exp. 624. Talk 17

Comp. 454

But if one is sued alone he must plead it in abatement

Post masters are not liable for letters lost, or notes lost in them thro the fault of subordinate officers. The office is for intelligence, not for insurance. The extent of the responsibility, if any, would be so great as to have paid to him by the P.M. But for actual fault of his own, Post master is liable - So are the under officers.

Comp. 765. arguments

3 Mch. 443.

3 Dec. 179. Coln. 374

2 Rule. 355. Bul. 173.

8 Co. 32. 15m 212. Exp. 129.

3 Mch. 443. 20. 200. 544. 175

3m. Rule 175

Inkeepers are liable in this act for all the property of their guests. Lost or injured for want of the degree of care which the Law requires of them -

Not liable for goods stolen by guests sent on commissions, or taken by public enemies -

Exp. 620. 5 L.R. 273.

Moore. 75.

To subject the Inkeeper for goods stolen a P.M. must have been a traveller & a guest & not as a guest.

8 Co. 32.

Exp. 620.

A neighbour procuring lodging is not a guest within this rule -

Exp. 627

Law. 188-9.

Exp. 627

Talk. 388.

Inkeeper not chargeable as such unless he receives profit from the goods or guest - even if guest goes away & leaves the goods, he is not liable - unless if he leaves his horse for this is a profit thro the owner is absent

Inde title "Inkeepers" & "Bailment"

This act lies for breach of "Warranty" upon the sale of a chattel, altho purchaser has not paid for it. Tho. Ab. Dicot. pt. 24.

Tresp. on the Case

Est. 327. To be liable for dead goods if the owner's absence is only
 Cas. 184. temporary & he is still a guest - ex. gr. going out in the morning
 on business & returning in the evening

Exp. 128. Cro. C. 692. Sickness or non sane memory no excuse for the Innkeeper

8th 32nd Innkeeper is not liable for injuries to the person of his guest
 by third persons, as assaults &c

7th. 166. Hard. 163. He is liable for not receiving guests, unless he has

9th. 327. good reason to refuse - To get a common carrier
 1st. 344.
 3d. 180. 2. And 70 1st for refusing to carry -
 9th. 87. Dy. 158.

action lies for deceit in sales or false warranty on

Cash. 629. False affirmation: ex. gr. affirming rent to be more than
 1 Com. 100. 7.
 2d. 211.
 1d. 90. 4th. 20. it may. Warranting goods to be of such a value &c
 Exp. 629. Cro. Jac. 4.

The action on warranty is founded on contract, not
 on Tort - Act on false affirmation ^{or deceit} ^{if} ^{approved. 2d. 2d. 468. 2d.}
 Tort, & scienter must be alleged in the declaration. ^{4th. 129}

This act does not ^{lie} ag^t vendor for false affirmation

10 Ves. 507. 1d. 24 when vendor has been guilty of neglect, as if he might say

Cro. Jac. 2d. 239. I have learned the true value &c. ex. gr. vendor affirming that
 386. 2d. 629-30. I. S. would give £100 - So if the defects are visible, or
 94. 2d. 118. gen^t warranty extends not to them - I am not not a special
 1d. 118.

2d. 630. warranty subject in this case? I think it will. If the
 1 Com. 170. defect is such as requires skill to discover it, it is reached
 2d. 165. by gen^t warranty -

Tresp. on the Case

may return the horse & man in ~~act~~ to
 keep him & sue for diff. of price between
 good & bad 384p. N.P.C. 83, 271.
 As to rescinding the contract under
 4 Ed. N.P.C. 95; 5 East 452.
 2 R. 211.

keeping the horse away length of
 time does not alter a contract
 originally false 1. H. 361. 17.
 except there be an agreement
 to return if faulty. 2 do. 573.
 2 R. 745.

2 R. 2. 5.

2 R. 743. Esp. 332.

If half be for a horse warranted
 sound, who be unsound party can't
 recover the other half if the man
 paid is equal to the value of the
 horse 7 East 481 n.

3 R. 383.

Salk. 12. 42. 2. 4. 30. 1 Com 171.

Allyn 91. East 90. 3 R. 57.

17 Mod. 109. 373. 1 R. 10. 5.

3 R. 51. Com 171.
 Esp. 639. Moore 43. 2. 6. 2. 40.
 1 R. 258. Bul. 32.

Esp. 600.

Salk. 12.

2 do. 223.

East 103.

Genl warranty of a Horse Holder gives the vendor
 that the horse since sold by L.R. that an express warranty
 only, in such subjects to the acts 2 East 322.

that he had but one eye

If a man specially warrants that a ring-boned
 horse will be well in a week, or will not hurt his hand
 it binds, I trust.

So it lies for artfully disguising known defects.
Suppression veri, is as bad as suggestio falsi. So when
 vendor practices fraud by a false affirmation in
 respect of his title to the goods sold. He is liable on
 an implied warranty whether any false affirmation
 or not. But if there be a false affirmation made
 he is liable on the ground of fraud.

Science in this case is said to be necessary. 2 do.
 science not traversable in pleading - for the law vide Esp. 632.

So it lies for injuries occasioned by any false or fraudulent
 affirmations made to defraud tho the person making it, had
 no interest in the fraud. So generally for injuries done
 by cheating or false pretences: e.g. false vice-bruining

Where a public right is obstructed or violated to
 the injury of an individual, he may maintain the
 act. But he must state & then special damages, e.g.
 If as an inhabitant of a certain place had a right
 to have a certain ferry toll free - Ferryman refused
 to carry him - he had his act stating the com. right, but
 not laying special damage - act did not lie.

Tresp. on the Case -

327

9 Geo. 5. 34216. Is it lies for injury w^d from a nuisance; e.g. obstructing
1 Vent. 239. ancient rights. But it is p^d that it must have stood time
3 Pl. 170 Geo. 5. immemorial - Wilmet Just. held 40 years sufficient.
18. Lick. 459. 6 mod. 116. free holds 20 yrs - is suff^t to leave the presumption of an
847 636 agreement to the King -

If a man having built a house on his own land
Esp. 636. 1 Hen. 122. tells it, neither he, nor any person claiming under him
1 Hen. 214. 1 Vent. 239. may erect any building which will stop its lights - It would
be an injury in derogation of his own grant. Tho the
Tint is not ancient, it makes no difference whether the
nuisance is public or private.

2 Pl. 217. - But obstructing a prospect is not actionable - it
1 Geo. 5. 8. Esp. 636. is matter of pleasure merely

esp. 636. A house built ~~on~~ the street, is on the street side
entitled to the privileges of an ancient messuage, it seems -
3 Wils. 461. 2 B. 2. 424. e.g. act^r lies for raising the street so as to obstruct the
windows - Builder is not foolish nor imprudent in this
case, as when he builds by another's land -

Esp. 637. Geo. 5. 141. One recovery of damages for a nuisance is no bar
2 Bro. 103. to another for subsequent damage. - Every continuance of
~~it~~ is a new wrong

To the author of a nuisance does not discharge
Lick. 450. himself by leasing or assigning from act^r from
Geo. 5. 273. injuries occurring after leasing &c.
Esp. 637.

Esp. 637. To too in the last case the act^r lies ag^t assignee or
Mab. 73. 555. Still when the continuance occasions a new nuisance -
Esp. 950. says above the whole injury is gone by the first execution -

Tresp. on the Case

Est. 637 - For obstructing lights, act^r lies both in favour of Lessee for
 4 Bourn. 241. - years & Reversioners - For lies an injury both to the inheritance
 Cro. B. 325 a 297. & present enjoyment -

3 Mol. 246. H.K.D. 134. 134. 107. To this act lies for overhanging Plff's House on
 11 Ann. 232. Roll 140. 56a. 101. land, so as to cast water upon it -
 Est. 637. 14a. 634-1. -
 It. 634 To for erecting a spout &c

Est. 638. 1 Rod. 89. Cro. B. 191. To for erecting a manufacture &c, the vapour of
 3 Mol. 247. which injures Plff's Herbage - or a melting House - To for

Est. 639. 2 Cro. 59^a putting any thing so near one's House as to render it un-
 1 Bourn. 244. 2 Rod. 141. - healthful - To too if not positively unhealthy, but noisome.

Est. 644-5-6. Maid Injuries affecting persons, as standing in the relation
 Paul 72. Cro. B. 501. 598. to others of husband parent, & master have been treated
 1 Bourn. 244. 12. 3 Bourn. 1778. of under the title of the domestic relations -
 2 Bourn. 145. 2 Bourn. 1032. of under the title of the domestic relations -
 11 Ann. 232. 2 Bourn. 149. 2 Bourn. 330. 2 Bourn. 54. 2 Bourn. 317. 3 Bourn. 1345.

Est. 645. 2 Bourn. 107. The actors in these cases have been in form
 1 Bourn. 244. 2 Bourn. 1032. tresp. in it; but they are substantially actors on the case

For certain other personal injuries this act lies;
 Est. 647. 1 Bourn. 14. 3 Bourn. 17. If a legal voter tenders a vote & the presiding or returning
 officer refuses to accept it, tresp. on the case lies ag^t him
 Est. 648. 2 Kent. 25. at com. Law To a candidate for an election office
 1 Bourn. 244. 2 Bourn. 50. may have this act ag^t the presiding or returning officer
 3 Bourn. 30. 32. if the latter refuses to take or count his votes -

To the returning officer is liable to this act
 Est. 649. in favour of the candidate for making a false return of
 11 Ann. 99. the votes at an election, if it prevents his election -

These are rules of the com^o. Law -

Novelties of action - Tort is infinitely various; Vide Bourn's note to Willes 581.

Tresp. on the Case

329

But holden that it lies not for a public return of a
 Galt 802. member of Parliament unless the right is determined in Parliament.
 mod. 46. 9. in favour of Off or cannot be determined as in case of its
 dissol. 17th. 1874. dissolution. I agree with Just. Will. These are not of G.L.
 La. R. 847. more 878, 275.

The then is a Stat on Tresp. giving double damages & costs 728 110-9°

Est. 648
 Bal. 82. Bal. 111.

So as an officer & making a false return to a mandamus
 it lies -

So as from Law. i.e. with a Stat on the subject in
 4 Brown 2303 Author may maintain this act & not as published
 his works without his permission. Stat. of Ann. 1849.

Any person employing another is answerable for his
 misconduct or neglect in doing the business, & is therefore
 liable in this act - i.e. where the injury is remediable
 by case - otherwise he is liable in Tresp. or any act
 adapted to the injury

Exp. 630.
 La. R. 794.
 Galt. 241.
 Pl. 659.

If an officer in executing a process has a stranger from
 executing a process, or by removing the goods of the
 original depos. or locking his doors, case lies either
 for the officer or Off in the process.

Galt. R. 193.
 17. R. 521. 249°

In declaring in case no process from Dowds
is necessary as there is in specific or formed act
Readings much as in Tresp. As to the actions
per quod vide Dowds & Luce, Parent & Child &
Warton & Llewellyn -

Tours -

Tresp. on the Case: addenda.

It is to be observed that there is a strong resemblance between actions on the case for the breach of an express warranty, and actions on the case in the nature of deceit or implied warranty. But this distinction between them ought to be attended to, viz;

2 East 446. That in the latter the gravamen is the deceit, & the gist of the action is the scienter; but in the former the gravamen is the breach of warranty, & where P declares in tort for such breach it is not necessary to allege the scienter.

3 T.B. 54. All actions of deceit for misinformation may (says Ld. Grosse) be turned into actions of assumpsit.

The ancient method of declaring in cases of warranty, was in Tort on the warranty broken (in this form of declaring scienter need not be charged, nor proved if charged 2 East 446) But of late years it has been found more convenient to declare in assumpsit for the sake of adding the money counts. - & this has prevailed for more than forty years; first established a case of Pruant vs Willson Doug. 18. This however is where the contract is still open and unrevoked. Comp. 818. Doug. 262. N.C. & 13 do. 7 East 274.

Lie 2 Selw. NO.

585 + note 7.

17 R. 153

Actⁿ of 3^d persons for fraudulent misrepresentation

This was first established in Barley v. Freeman 3 PR 51. on a motion in arrest of judgment on the third count in the declaration, which stated "Def^t intending to deceive & defraud the Pl^{ff} did wrongfully & deceitfully encourage & persuade them to sell & deliver certain goods to one F. upon credit, & for that purpose did falsely & deceitfully & fraudulently assert, that F. was a person safely to be trusted & whereas in truth F. was not a person to be trusted & the Def^t well knew the same to be" The question was, admitting all the facts to be true as stated, was Def^t liable?

King & C. J. Aschmole & Keble were of opinion that he was - Gross contra

In cases of this kind Def^t need not have derived any advantage from the fraud or deceit - or that he should have colluded with the party

1 East 328. who did derive the advantage - but there must be fraud in the Def^t.

2 do. 42. ("to fraud" is an intention to deceive whether from an expectation of advantage to the party himself or ill will towards the other, immaterial" 2 East R. 108.) in a late case where there was not any fraud or deceit in the party making the representation, but he had incautiously asserted that to be within his own knowledge, which in strictness he could not be said to have known, but had reasonable & probable cause only to believe, he was held liable - 2 East 92.

"Circumstances of this kind in 1 East 318. can of suspicion even in fact -

In Buller's N.D. it is said that every imprisonment includes a Battery, & it
 324 N.D. appears that Ld. Kenyon was of this opinion in the case of Opley vs Flower & al. &
 306 But this has been decided otherwise since in Bennett vs. Lyne. 1 Bos. & P. N. R. 255. The
 Ct. observing that it was absurd to contend that every imprisonment included a Battery.

Action of Trespass et armis, for false imprisonment.

3 M. 127. Every unlawful restraint of ones liberty is rather every,
 Ck. 326. violation of ones right of Loco motion is false imprisonment.
 1 Inst. 589.
 5 Bac. 169. 49. Illegal confinement in a private house, street &
 Arch. 2. 302.

3 M. 127. Two requisites; 1st Detention of the person. 2nd Unlawfulness of the detention.
 2 Inst. 579.
 5 Bac. 169.
 Arch. 262.

The unlawfulness consists in want of authority.
 Exp. 333.
 Lalk. 408. authority may arise from legal process or from special
 3 M. 127. cause, amounting from the necessity of the case to a justification.
 Exp. 334 as the arresting of a felon by a private person. Post - He
 his not for the crew of a ship captured on prize, tho the
 Doug. 572 prove to be no prize - Law of nations - admiralty etc.

5 Bac. 169. But every arrest of a person for a civil cause,
 2 Inst. 572. without legal process is an unlawful restraint.
 Bac. 169 2 Inst. 147. A custom to imprison without legal notice is not good -
 5 Bac. 169 2 Inst. 147. A private person not guilty imprisonment
 2 Roll. 581. by confining a person arrested by a process officer, at
 the officers request. - Decided that an officer having
 1 Inst. 24. made an arrest on final process cannot delegate his
 5 Bac. 169. right of custody in his own absence.
 2 Inst. 147.

The most common cases are those of arrests under
writ process.

False Imprisonment

Ref. 326. Park 396. If a Ct of Records is guilty of corrupt practices, as
 Comph. 1792. Ref. 635.
 17 R. 503-13-14-34-57.
 2 H. R. 1141. action of the acts judicially & within his jurisdiction

In Eng. a judge of a Ct of Records of genl jurisdiction
 Ref. 320. 12 R. 23-44.
 Lark. 346. 2d R. 484.
 Comph. 1792. 17 R. 503-14-114.
 2 H. R. 1141. — sent. is not liable for any judicial act, whether it happen
 thro mistake or malice, if he confines himself to his
 proper jurisdiction. No proof in this case is admitted
 of the vehement & violent presumption in favour
 of the Judges integrity —

But, it seems if a Ct of Records of even genl
 jurisdiction has not jurisdiction as to the subject matter
 10 Co 76^b
 1 Hawk 86. 89. the Judges are liable, for here they do not act judicially
 But if they have jurisdiction of the subject matter &
 in their proceedings, transgress their jurisdiction
 10 Co 76^a
 2 H. R. 1145 — they are not liable, sent. (Sent. ex gr. amercing
 Lark. 396. a captive as a person in a civil case

Ref. 321. 8 R. 114.
 8 L. R. 412. 11 R. 493
 2 H. R. 1145. (Sent.) are liable if they transgress their jurisdiction
 even by mistake. Also, if they do not exceed their
 Ref. 326. Lark 396. jurisdiction. Not liable for malicious acts — they being judicial
 10 Co 76. 2d R. 484-494. (Cts not of record (ie Justices in Eng.) are liable at
 1 H. R. 344. 17 R. 503-14-339. least sent. for any mistakes of Judgment — sent. unless
 2 H. R. 1145. they transgress their jurisdiction in some respect —

False Imprisonment

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Rep. 338

But this rigour is mitigated by several Stat.

1792. 653.

But the Ct. of B. R. will not grant an information
of a Justice who appears to have acted uprightly
in Com. Justice. At peace in Ct. of Records

20th R. 467. Talk 200.

Leath. 491. 37th. 25.

19. mod. 386.

Le Ct. of Records

20th R. 1146.

Seemed to be universally true

Commission^r on the estate of an instrument, not
a Ct. of Records in Com. No appeal from their decision as a Ct.

As to arrests of persons not liable to arrest

Rep. 326.

20th R. 1198.

37th. 308.

amounting ex ad son for the debts of testator
it is unlawful, except on a suggestion of duress

False imprisonment lies in this case, as the attorney as well
as the original Wff (he) and the rule is, generally that an attorney

37th. 445. who is instrumental in causing an arrest is liable with
20th R. 1192.

the Principal.

In this case, I apprehend the Officer would not be

17th. 710.

10th. 746.

20th. 385.

Rep. 381.

17th. 95.

liable, the subject matter being cognizable to the person amenable
to the Ct. (the cause of action having arisen within the
local limits) provided the Ct. is of general jurisdiction —

Exemptions from arrest in Eng. are sometimes

4 Com. 475.

17th. 222.

20th. 273.

17th. 635.

connected with the character of the individual as Ex subpo
sometimes it arises from temporary circumstances, or
particular privilege as attendance on a Ct. or a session.

False Imprisonment.

on witness re - the privilege of a tutor extends to him
 4 Dec. 222. 8 Dec. 534 one money & necessities - In the latter cases the
 4 do 377. 2 M. R. 1142. arrest is not illegal in the first instance, but a superseas
 4 Mar. 171. 6 Dec. 379. issued after which, the detention is illegal & act lies
 4 May. 549. 882. 4 Dec. 885. in. after which, the detention is illegal & act lies
 4 M. R. 238. 3 Inst. 97 Qu. as to officer or the officer only? I conclude as to both.
 6 Co. 50th Com. p. 9. What is so by But. Just Dng. 582 must relate to an act
 after the superseas, for the prior detention in case
 of a Peer

In Com. a writ of protection is commonly obtained
 in these cases - this is as a superseas in Eng. arresting
 one protected in therefore false imprisonment but not till
 the protection is shown. The writ in these cases is good
 until continues.

Arresting a Peer, certified bankrupt, officer not
 liable, he is bound to obey the writ - Party may be
 liable in case. vide "Malicious Prosecution"
 2 J. R. 29. 2 Inst. 530. Qu. in case on Exec.

The Privilege of tutors is disallowed in case of
 collection - so in vexatious act it being discre-
 tionary, with the Ct to allow them or not -

To where a party attends on a volunteer upon a
 Justice or with a view of answering process, where
 there is none -

Goalor's detaining prisoner for fees, the attendance
 entitled to a discharge, is not false imprisonment -
 Same in Com. seems as to board & ribbon.

1 Kelle 220.

2 M. R. 1193

Dng. 546-50.
 10 Co. 76th

2 M. R. 1193

11 Nov. 79. Com. p. 9

11 M. 639

10th 444

False Imprisonment

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5 Mac. 171. 2 B. & A. 208. If the order of the Ct is to confine one in a certain prison
5 mod. 295. 3 B. & A. 219. confining in any other is False imprisonment

A peace officer is justified in arresting with warrant
Ding. 334-5.
4 Mac. 517. If on a reasonable charge of Felony, tho no Felony is com-
mitted. 1 B. & A. 43. -mitted - Locust of a private person

But if Felony has been actually committed, a private
person suspecting another to be guilty on reasonable
5 Mac. 171. grounds with malice, is not liable for arresting
Ding. 345 without warrant to carry before a magistrate.
2 B. & A. 68.

1 B. & A. 100. To prevent a breach of peace or escape 2 Hawk. 82

Exp. 334. Ding. 345. Locust if no Felony is committed -

Exp. 327. 605. An original arrest on Sunday in civil cases
5 mod. 95. 2 B. & A. 28. being void (by Stat. 29 Geo 2) is false imprisonment -
4 Mac. 566. 171. R. 285. 2 B. & A. 1195.

2 B. & A. 1195. 2 Hale 99. Such an arrest is good at Com. Law.

But Bail may take their principal on Sunday -

[Chadwell contrary as to Bail to the H. 2 H. R. 1273.] For he is
in nature of goods, principal as a prisoner, & the taking

2 B. & A. 320. by bail, is retaking or an escape - Such an arrest
148. Exp. 305. 2 B. (under an escape warrant is lawful -
2 H. R. 1273.

5 B. & A. 208. 1. Arrest in civil cases by breaking open doors of Defendant
H. 2. 2 Mac. 284. House is false imprisonment & breach of Inner door
and not "H. 2."

It has been questioned whether if an arrest is made
by illegally breaking the house, the action of the prisoner
is good, & the only remedy by return or whether the action
is void & may be set aside is a summary remedy
by discharging the person arrested - not decided -

False Imprisonment -

No. Dec 908

Cub 383.

No. since the 1st interference is arbitrary this was a case of breaking doors.

2 Bac. 107.

2 Rev. 205-6 5 Co. 93.

Since decided that the execution of the process was void, in case of process taken by breaking a door & not set aside -

1 Polt 82.

Couch. 1-9.

In the last case False imprisonment lies, i.e. case of breaking doors. Diff^r from the case of infringement of the party - arrest of the party illegal at initia

If an officer shows the warrant to him who is charged with the process & he thereupon voluntarily surrenders any door the slightest compulsion attends the officer to the magistrate who after examination discharges him. It seems this act does not lie. 2 Rev. 205 & 211. Words merely will make an arrest false 79.

Also questioned whether if an illegal arrest is made in consequence of which another arrest is made, which would otherwise be good, the latter is void - unless there be some collusion - abet of collusion - scab - (H.)

1 Post 107.

If a having been collected, subject Brown, then if innocent may have this act of A. 6 Co. 215.

Decided that an officer by an escape warrant may attack his prisoner in another state - the warrant is of no use - as to bail quere from another state vide 5 Rev. 172 note

Dany. 62. 2 Bull. 52 2 Pls.

Rev. 301. 2 Ann. 490-3.

More 577 & 2 Rev. 320.

Rev. 328.

If an officer by mistake arrests to instead of B. he is liable for false imprisonment - So even if B. declared himself to be A. Damages mitigated

Rev. 120 2 Rev. 191

In Proc. arresting Defenda body an mesne or final process in civil cases when supp person proby is tendered is false imprisonment - for the process is not void.

5 Bac. 171.

the 212-115 for meeting 21st after return day of the writ 21st. H. 66 585.

5 Bac. 171. Hawk 135

No. 5.

Any person has a right to arrest another who is fighting & to restrain him till his passion is over - In certain cases juries convert the table to be used with their husbands cannot be held under arrest on mesne process. But there is no instance of false imprisonment in these cases - see 1 Rev. 172.

2 Rev. 192. 1870. 486.

Rev. 2. 720.

Dany. 648. any.

46 115 2 Rev. 17.

False Imprisonment

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In the case of false arrest, no action lies; *2 M. D. 1193-4*
 analogy in the process is legal; tho the service sometimes set aside &
Dowd. 525 the false discharge - original arrest not illegal -

5 Mac. 1192. Post 1186 Arresting & confining one for a short time under
Moore. 408 a lawful warrant from a Justice for examination is
Car. 2. 829 not illegal.

A private person may without warrant confine
5 Mac. 1192. a person if ordered in mind, & who appears disposed
 to do mischief -

If an officer makes an arrest on person given
 the face of which it appears that he is doing it, had
 no jurisdiction, he is liable according to the cause
 of the arrest, from whatever cause the defect of
 jurisdiction arises - But the rule has been
 extended much further - Thus it has been held
 without any regard to the defects appearing on the face
 of the process or not, that when a D^y is limited
 jurisdiction has not jurisdiction of the cause, from
 whatever quarter the defect of jurisdiction arises
 the officer would be liable - Decision & reasoning
 in the *Marshalsea* case - Reasoning contradicted
 in *La. R. 290* for *H. C. 993-507* looks supported
 in a note 380 *Case 321-4* -

Post 391.
But. 82-3
Hard. 480.
2d R. 290
Contra
Car. 2. 90.

10 Co. 112-7.
Car. 2. 314.
Case 387.

False Imprisonment

2 J.R. 53-4. The decision in the Marshalsea case, seems to be still law
and 450. Pte. 710. 2-1002.
Cik. 391. Pul. 82-3. in Eng. viz that when the Ct issuing the process has no
1 Kent. 393-4. Co. Cas. 395 jurisdiction of the subject matter, everything done under it
Comp. 172. 2 Wils. 384. is absolutely void, whether it appears or not on the face
8 T.R. 424.

But when the Ct (tho of limited jurisdiction) has
jurisdiction of the subject matter, & the defect of jurisdiction
is from something local or personal, the Officer is
justified, unless the defect appears on the face of the
process - & according to Ld. R 230-1. Comp. 20. he is
not liable even in this case (viz where the defect
appears on the face of the process) because the
original Deft ought to have pleaded it - Pul. 83 con.
10 Geo. 76^c 6 Co 54^a as to cases
of Comm. Pleas 3 Wils. 345.
Ed. 309. 9 Ed. 705. 844. 2 Wils.
384. 3 Wils. 212.

Officer may justify under command of the
Cts of Westminster, tho the writ be void, except where
the Ct has not jurisdiction of the subject matter

In Com an Officer is justified in all cases
unless the process is void upon the face of it

When the jurisdiction is complete & the process is
malicious & unfounded, the officer is justified, tho

the Ct or magistrate as the case may be, is liable.

Where a Ct having jurisdiction of the cause,
proceeds erroneously or improperly, still if the
process appears regular, the officer is justified

Rule seems to be in Eng., according to the weight of
authority, that when the subject matter is out of the Ct's
jurisdiction (whether the jurisdiction is gen^l or limited)

process is void, the office liable - aliter when the want of jurisdiction is as to the person or place; there the office is not liable; unless it appears from the face of the process nor then in case of the City of Westminster - But the latter branch of the rule the true of course process applies not to final process, issued by inferior Courts with qualification - e.g. When an act is under final process of inferior Ct. Officers participation must show that the cause arose within the jurisdiction, or at least that it was so laid -

But the "in" under the qualification justifies the
 plea. It does not the original Off. He is bound to know the act
 of the Co's production & to remove it, & when the cause of action

Geo. Luc. 314.

2011.02.2 mod 1967.02 - The original Dept. now 11/1 is not named by having

Ref. 390. Phil. 68.

5 Dec 170. Kent. 369.

Lutw. 937. 156.

1 Kent. 236. use

citd. ind. group. 20

pleased to the just act - La R^o verified that even the original
N.F. is liable in this case - La R^o 230. approved in this point too

In some cases process is void & the party & the ca
are liable, where the jurisdiction of the ct over the
cause is complete as to the subject matter person & place

Sta. 710-

Est. 391-7.

8 Dec. 114. In

1. In case of limited jurisdiction; e.g. When an authority
is given by Stat. is strictly pursued Where a Justice committed
for selling game tho he had suff^t objects to answer

1 Mil. 153.

Dist. 232

The penalty office is excused, but the illegality of the warrant was not patent. —

False Imprisonment

Where a person was convicted on a stat. penalty, L^{ds} object he offered to pay but was imprisoned by the constable till he paid the fees, which the stat did not allow. Here the constable was Def^t. This was for the abuse of process - no question of jurisdiction.

Exp. 3312 Bl. R. 1855. So again Commission^{ers} of Bankrupt for any Commission^{ers} not warranted by their Stat. powers.

II. So in other cases, the process of even the Ct of Westm^{ster} for any Ct aside from any objection to the jurisdiction of the Ct is called void & the Off^{icer} in the process liable to

Exp. 3229.
From 1471. 2 Wils. 341-5. then action for irregularity, yet as a capias returnable to the next term but one to that of the teste.
2 Wils. R. 845. Salk. 400
1 Root. 315.

3 Wils. 248 Officer not liable in this case if the process is from the Ct of Westm^{ster}; tho the irregularity appears on the face. Same not probably in dean. See?

III. So tho the original arrest were lawful yet for any subsequent oppression, this act^{er} lies agst the officer as the magistrate if he is in fault; e.g. Wanton cruelty - confining in a dungeon with^{out} air &c - Committed by military commands. jurisdiction - Rece special -

Exp. 382 R.
17 R. 538
1005. 3 Wils. 532.
100. 306. 2 Wils. 485. Then an officer justified proof that he acted as officer - is suff^{icient} as to that fact - he is not bound to show his ap-
pointment. An may it not be rebutted!

False Imprisonment

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1 Lev. 95. - A Gen. rule; an arrest under an irregular process is void;
 Vin. det. Vacat. So under a process of arrest founded on an irregular proceeding;
 2 Esp. 399. 391.
 3 East. 128 2x. 39. Arrest on an ex. con. issued on a judgment set aside
 1 An. 507. for irregularity. 1 And. 272. 1 And. 185.
 2 R. 313.
 2 Esp. 391. is in It is said in the last case that the officer serving the process is
 not liable - 2u. If the Ct. is of limited jurisdiction & the irregular
 1 Wils. 345
 2 An. 993-4. - Liability appears.

4 Bac. 50. Esp. 391. That an arrest on an erroneous process is good -
 1 Wils. 345. Therefore the party may justify under erroneous process
 till it be reversed.

Process has been holden irregular & void when filled
 up with proper authority, &c. &c. Where in Eng. the under
 2 Esp. 399
 2 Wils. 47. Shff left a blank for attorney to fill with the name of a
 Bailiff - The person sued here was the person serving the
 process - It does not appear that he knew of the irregularity
 (taken authority &c. &c. Shff's warrant) Stat. Com. 24. 387.

What abates when directed to an insufficient person, unless
 the name is inserted by the magistrate. So a writ drawn by
 Shffs, except in these cases.

So where the process has issued informally -
 process out of the vice Chy Ct. of Oxford - custom - argument
 1 Esp. 399. Shff making oath of his cause & act, that he believes &c.
 1 An. 993. he swears that he suspected &c. The party, Ct. officer & other bail

False Imprisonment.

all joining in one plea - The add. that the officer
 & govt might have justified - Denied 2 Wils. 385 &
 He who said to be coram non iudice

Plt. 994

Officer too said is not liable if he had not
 joined in pleading with the others - question 2 Wils. 385

Exp. 330. 8y. 262 p. 32. Where the writ is not returnable on a day certain
 2 Bulst. 36. 1 mod. 81. It is in general, ex. gr. at the next Ct. of the marshalsea.
 2 mod. 38. Coust. 21. 2. But this rule applies only to treason process; & has
 once been denied even in case of murder process; &
 'next Ct. & judges report - Ideo Lu. as to our Just. & bery
 let which have stated terms established by just Law -

Exp. 339. 14 G. 2. 40. 9. Arrests under good search warrants are illegal.
 2 Wils. 275. Kib. 213. So are gentleman's & any kind - as a warrant to arrest
 the author of a libel whenever they are.

Requisites to search warrants; 1 Granted on oath.
 2 The grounds of suspicion declared; 3 Executed in the
 daytime by a known officer & in the presence of the
 informer; 4 Directed to a particular place viz. the particular
person in whose house it is

Exp. 399

2 Wils. 291. 2.

When all these requisites are observed the informer is
 justified or not by the event

Exp. 359. 7 G. 2. 52.

2 Bull. 583. Coust. 20

2 Wils. 1184

Then the officer serving the process justifies, under it
 he need show only the writ or process itself & that it is
 returned of some process & the return day has arrived -

False Imprisonment

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Comp. 20.
5th 90th
4th 87th
11th 17.

In Pers. Sheriff under officer is not obliged to
show the return, because not in his power. But the
necessity of the officers showing a return obtains only
in case of mesne process.

Exp. 393-4.
Lalk. 408-9.

But if the original Off. depts I must then a
Judge as well as exor in case of final process -
for Judge may have been reversed before the
arrest & Off. original ought to take notice of it -

Lalk. 408-9.

Same rule when the act is of a mere thouge
who procures the service of process for another, occurs
if he acts in aid of the officer & at his request &c.

11th 8812 Ed. 53.
5th 182 Lalk. 409.
8th 182 his confederate
case - good case
Lalk. 592 -

If a Off. does not return a writ when brought
to do it / or makes a false return I may be treated
as a trespasser ab initio - tho this is mere omis
sion, for the return is necessary to complete &
validate the act. This seems to be contrary to the
gen^l rule, viz. that no person shall be made a trespasser
by relation for mere non presence or omission;
but the true ground of the officers liability in this
case as a trespasser by relation is that he omits
to do an act which is necessary to validate or con-
summate the process.

Exp. 406. 11th 499, 104
509.

If the original Off. & if it is in such a way
that any person is depending; if thus joined the plea
of participation is insuff^t for both & so for the officer -

False Imprisonment

Est. 33. R. 1034

1482. 17.

One convicts if the plea is not good for the officer
 & would be for original off. L. loses his defence by joining
 "p. q." officer does not show the return of the process as
 when L. ought to do it.

Balk. 409. Leo. 1034. 97^a

2 Black. 512.

2 Mich. 377.

3 com. 579.

20 Ed. 502.

Procuring - commanding - aiding - assisting, makes
 one a principal trespasser - Lord keeping the
 key of a room knowing that one is imprisoned
 in it, is guilty of false imprisonment.

Procuring even a Foreign prince this year
 to imprison one is false imprisonment in the
 procurer.

2 H. R. 783.

1055.

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Action on the Case for Malicious Prosecution

This actⁿ is to recover damages of ^{one} who has
procured an indictment or other prosecution, or has
acted as Jst, from a corrupt motive, i.e. malice or
with any ground or probable cause

2 Hov. 275.
9 Hov. 2. 185. 1 Saund 230.
10 Mod. 148. Finch L. 305.
2 Hov.

3 Hov. 125.
2 Bulst. 271
Esp. 530.
1 Com. 145.

Analogous to the old actⁿ of conspiracy, which is now
much out of use - Conspiracy lies only, as two or more
for having falsely & maliciously procured the Jst, for
treason or felony & thus endangered his life 2 Hov. 379.

Another analogous actⁿ is the actⁿ in the case in
nature of a conspiracy; this lies where two or more
conspire to prosecute another maliciously & with cause
Esp. 530.
1 Bac. 61.
1 Saund 230^a
or prop^d.

The gravamen in the actⁿ for a malicious
prosecution resembles in some measure that of harassment
10 Mod. 219-20. It is not necessarily on ground the damage to which Jst has
4 Hov. 247. It. 691. 977.
9 Hov. 185. Lalk. 13. 14. been exposed, but the vexation, expense, & scandal.

W. 241. Actⁿ of conspiracy lies not unless Jst has actually
Esp. 527-8. 530.
12 Co. 23. 64. 8.
1 Hov. 112. 1 Com. 141. the writ -
2 Hov. 314. 15260.

Redressment for a conspiracy lies where there has
been an unlawful conspiracy as above, tho nothing
is executed - so actⁿ on the case in nature of a conspiracy.

W. 241. lies, tho no indictment has been actually returned, i.e.
1 Hov. 112. 1 Com.
15 Hov. 425. suppose for actually charging a crime by conspiracy which is an injury to,

Malicious Prosecution

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1201 & 388.
199. It is essential to the support of this action for mal. prot. that malice & want of probable cause in the former prosecutor should have concurred.

4 Brown. 477. 12 M. 544-5. "Malice" is any corrupt & wicked motive -
Pul. 14.
Exp. 529. Satisfy alone not sufft.

Exp. 529. Satisfy alone not sufft.
Pul. 14.
Exp. 529. true. But probable cause, whether he acted with malice or not -

1201. If in the act it is, for a false & malicious claim, it is called a veracious lawsuit. This division summed - 1st of criminal prosecutors false & malicious be -

1 Rev. 15. yels. 44. If a man is falsely & indicted for a crime that
Lalk. 14. would injure his reputation, he may have this action

Lalk. 15. If the charge exposes to danger his life or liberty -
Lalk. 15. 1201. 1202. An indictment false & subjecting to expense only is sufft.
Exp. 528. In 977 to support the act. e.g. But fees alone for expense

1201. incurred on a malicious prosecution of his wife - act lies
1201. Denying that danger to life & liberty of Off is not necessary

Exp. 528. 4 L.R. 248. The indictment having been ill, so that Off was in no danger of a
Lalk. 15. 1201. 1202. conviction is no answer to the act, if the charge injures his reputation &
1201. 1202. fear of vexation & expense is sufft.

Malicious Prosecution

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1 Penn 228. But the omission to show that the prosecution is at an end
 Est. 532. is cured by verdict.

an allegation that the P^{ff} was "acquitted" on the
 Bul. 14
 Est. 530. original prosecution not supported by evidence of a non pro.
 Falk. 21. for this is not an acquittal
 5 mod 201.

The declaration states all the proceedings in the
 Est. 532-3 original prosecution; it may misstate in a material
 4 R. 540. part of the indictment is stated - e.g. a variance between
 6 mod 216. the original record & declaration as to the day of acquittal.

Est. 532. 241. seems it to be an immaterial part
 R. 1050 -

It seems that no civil act lies ag^t Judges of
 1 Com R. 3. Est. 635.
 1 R. 509-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-1043-1044-1045-1046-1047-1048-1049-1050-1051-1052-1053-1054-1055-1056-1057-1058-1059-1060-1061-1062-1063-1064-1065-1066-1067-1068-1069-1070-1071-1072-1073-1074-1075-1076-1077-1078-1079-1080-1081-1082-1083-1084-1085-1086-1087-1088-1089-1090-1091-1092-1093-1094-1095-1096-1097-1098-1099-1100-1101-1102-1103-1104-1105-1106-1107-1108-1109-1110-1111-1112-1113-1114-1115-1116-1117-1118-1119-1120-1121-1122-1123-1124-1125-1126-1127-1128-1129-1130-1131-1132-1133-1134-1135-1136-1137-1138-1139-1140-1141-1142-1143-1144-1145-1146-1147-1148-1149-1150-1151-1152-1153-1154-1155-1156-1157-1158-1159-1160-1161-1162-1163-1164-1165-1166-1167-1168-1169-1170-1171-1172-1173-1174-1175-1176-1177-1178-1179-1180-1181-1182-1183-1184-1185-1186-1187-1188-1189-1190-1191-1192-1193-1194-1195-1196-1197-1198-1199-1200-1201-1202-1203-1204-1205-1206-1207-1208-1209-1210-1211-1212-1213-1214-1215-1216-1217-1218-1219-1220-1221-1222-1223-1224-1225-1226-1227-1228-1229-1230-1231-1232-1233-1234-1235-1236-1237-1238-1239-1240-1241-1242-1243-1244-1245-1246-1247-1248-1249-1250-1251-1252-1253-1254-1255-1256-1257-1258-1259-1260-1261-1262-1263-1264-1265-1266-1267-1268-1269-1270-1271-1272-1273-1274-1275-1276-1277-1278-1279-1280-1281-1282-1283-1284-1285-1286-1287-1288-1289-1290-1291-1292-1293-1294-1295-1296-1297-1298-1299-1300-1301-1302-1303-1304-1305-1306-1307-1308-1309-1310-1311-1312-1313-1314-1315-1316-1317-1318-1319-1320-1321-1322-1323-1324-1325-1326-1327-1328-1329-1330-1331-1332-1333-1334-1335-1336-1337-1338-1339-1340-1341-1342-1343-1344-1345-1346-1347-1348-1349-1350-1351-1352-1353-1354-1355-1356-1357-1358-1359-1360-1361-1362-1363-1364-1365-1366-1367-1368-1369-1370-1371-1372-1373-1374-1375-1376-1377-1378-1379-1380-1381-1382-1383-1384-1385-1386-1387-1388-1389-1390-1391-1392-1393-1394-1395-1396-1397-1398-1399-1400-1401-1402-1403-1404-1405-1406-1407-1408-1409-1410-1411-1412-1413-1414-1415-1416-1417-1418-1419-1420-1421-1422-1423-1424-1425-1426-1427-1428-1429-1430-1431-1432-1433-1434-1435-1436-1437-1438-1439-1440-1441-1442-1443-1444-1445-1446-1447-1448-1449-1450-1451-1452-1453-1454-1455-1456-1457-1458-1459-1460-1461-1462-1463-1464-1465-1466-1467-1468-1469-1470-1471-1472-1473-1474-1475-1476-1477-1478-1479-1480-1481-1482-1483-1484-1485-1486-1487-1488-1489-1490-1491-1492-1493-1494-1495-1496-1497-1498-1499-1500-1501-1502-1503-1504-1505-1506-1507-1508-1509-1510-1511-1512-1513-1514-1515-1516-1517-1518-1519-1520-1521-1522-1523-1524-1525-1526-1527-1528-1529-1530-1531-1532-1533-1534-1535-1536-1537-1538-1539-1540-1541-1542-1543-1544-1545-1546-1547-1548-1549-1550-1551-1552-1553-1554-1555-1556-1557-1558-1559-1560-1561-1562-1563-1564-1565-1566-1567-1568-1569-1570-1571-1572-1573-1574-1575-1576-1577-1578-1579-1580-1581-1582-1583-1584-1585-1586-1587-1588-1589-1590-1591-1592-1593-1594-1595-1596-1597-1598-1599-1600-1601-1602-1603-1604-1605-1606-1607-1608-1609-1610-1611-1612-1613-1614-1615-1616-1617-1618-1619-1620-1621-1622-1623-1624-1625-1626-1627-1628-1629-1630-1631-1632-1633-1634-1635-1636-1637-1638-1639-1640-1641-1642-1643-1644-1645-1646-1647-1648-1649-1650-1651-1652-1653-1654-1655-1656-1657-1658-1659-1660-1661-1662-1663-1664-1665-1666-1667-1668-1669-1670-1671-1672-1673-1674-1675-1676-1677-1678-1679-1680-1681-1682-1683-1684-1685-1686-1687-1688-1689-1690-1691-1692-1693-1694-1695-1696-1697-1698-1699-1700-1701-1702-1703-1704-1705-1706-1707-1708-1709-1710-1711-1712-1713-1714-1715-1716-1717-1718-1719-1720-1721-1722-1723-1724-1725-1726-1727-1728-1729-1730-1731-1732-1733-1734-1735-1736-1737-1738-1739-1740-1741-1742-1743-1744-1745-1746-1747-1748-1749-1750-1751-1752-1753-1754-1755-1756-1757-1758-1759-1760-1761-1762-1763-1764-1765-1766-1767-1768-1769-1770-1771-1772-1773-1774-1775-1776-1777-1778-1779-1780-1781-1782-1783-1784-1785-1786-1787-1788-1789-1790-1791-1792-1793-1794-1795-1796-1797-1798-1799-1800-1801-1802-1803-1804-1805-1806-1807-1808-1809-1810-1811-1812-1813-1814-1815-1816-1817-1818-1819-1820-1821-1822-1823-1824-1825-1826-1827-1828-1829-1830-1831-1832-1833-1834-1835-1836-1837-1838-1839-1840-1841-1842-1843-1844-1845-1846-1847-1848-1849-1850-1851-1852-1853-1854-1855-1856-1857-1858-1859-1860-1861-1862-1863-1864-1865-1866-1867-1868-1869-1870-1871-1872-1873-1874-1875-1876-1877-1878-1879-1880-1881-1882-1883-1884-1885-1886-1887-1888-1889-1890-1891-1892-1893-1894-1895-1896-1897-1898-1899-1900-1901-1902-1903-1904-1905-1906-1907-1908-1909-1910-1911-1912-1913-1914-1915-1916-1917-1918-1919-1920-1921-1922-1923-1924-1925-1926-1927-1928-1929-1930-1931-1932-1933-1934-1935-1936-1937-1938-1939-1940-1941-1942-1943-1944-1945-1946-1947-1948-1949-1950-1951-1952-1953-1954-1955-1956-1957-1958-1959-1960-1961-1962-1963-1964-1965-1966-1967-1968-1969-1970-1971-1972-1973-1974-1975-1976-1977-1978-1979-1980-1981-1982-1983-1984-1985-1986-1987-1988-1989-1990-1991-1992-1993-1994-1995-1996-1997-1998-1999-2000-2001-2002-2003-2004-2005-2006-2007-2008-2009-2010-2011-2012-2013-2014-2015-2016-2017-2018-2019-2020-2021-2022-2023-2024-2025-2026-2027-2028-2029-2030-2031-2032-2033-2034-2035-2036-2037-2038-2039-2040-2041-2042-2043-2044-2045-2046-2047-2048-2049-2050-2051-2052-2053-2054-2055-2056-2057-2058-2059-2060-2061-2062-2063-2064-2065-2066-2067-2068-2069-2070-2071-2072-2073-2074-2075-2076-2077-2078-2079-2080-2081-2082-2083-2084-2085-2086-2087-2088-2089-2090-2091-2092-2093-2094-2095-2096-2097-2098-2099-2100-2101-2102-2103-2104-2105-2106-2107-2108-2109-2110-2111-2112-2113-2114-2115-2116-2117-2118-2119-2120-2121-2122-2123-2124-2125-2126-2127-2128-2129-2130-2131-2132-2133-2134-2135-2136-2137-2138-2139-2140-2141-2142-2143-2144-2145-2146-2147-2148-2149-2150-2151-2152-2153-2154-2155-2156-2157-2158-2159-2160-2161-2162-2163-2164-2165-2166-2167-2168-2169-2170-2171-2172-2173-2174-2175-2176-2177-2178-2179-2180-2181-2182-2183-2184-2185-2186-2187-2188-2189-2190-2191-2192-2193-2194-2195-2196-2197-2198-2199-2200-2201-2202-2203-2204-2205-2206-2207-2208-2209-2210-2211-2212-2213-2214-2215-2216-2217-2218-2219-2220-2221-2222-2223-2224-2225-2226-2227-2228-2229-2230-2231-2232-2233-2234-2235-2236-2237-2238-2239-2240-2241-2242-2243-2244-2245-2246-2247-2248-2249-2250-2251-2252-2253-2254-2255-2256-2257-2258-2259-2260-2261-2262-2263-2264-2265-2266-2267-2268-2269-2270-2271-2272-2273-2274-2275-2276-2277-2278-2279-2280-2281-2282-2283-2284-2285-2286-2287-2288-2289-2290-2291-2292-2293-2294-2295-2296-2297-2298-2299-2300-2301-2302-2303-2304-2305-2306-2307-2308-2309-2310-2311-2312-2313-2314-2315-2316-2317-2318-2319-2320-2321-2322-2323-2324-2325-2326-2327-2328-2329-2330-2331-2332-2333-2334-2335-2336-2337-2338-2339-2340-2341-2342-2343-2344-2345-2346-2347-2348-2349-2350-2351-2352-2353-2354-2355-2356-2357-2358-2359-2360-2361-2362-2363-2364-2365-2366-2367-2368-2369-2370-2371-2372-2373-2374-2375-2376-2377-2378-2379-2380-2381-2382-2383-2384-2385-2386-2387-2388-2389-2390-2391-2392-2393-2394-2395-2396-2397-2398-2399-2400-2401-2402-2403-2404-2405-2406-2407-2408-2409-2410-2411-2412-2413-2414-2415-2416-2417-2418-2419-2420-2421-2422-2423-2424-2425-2426-2427-2428-2429-2430-2431-2432-2433-2434-2435-2436-2437-2438-2439-2440-2441-2442-2443-2444-2445-2446-2447-2448-2449-2450-2451-2452-2453-2454-2455-2456-2457-2458-2459-2460-2461-2462-2463-2464-2465-2466-2467-2468-2469-2470-2471-2472-2473-2474-2475-2476-2477-2478-2479-2480-2481-2482-2483-2484-2485-2486-2487-2488-2489-2490-2491-2492-2493-2494-2495-2496-2497-2498-2499-2500-2501-2502-2503-2504-2505-2506-2507-2508-2509-2510-2511-2512-2513-2514-2515-2516-2517-2518-2519-2520-2521-2522-2523-2524-2525-2526-2527-2528-2529-2530-2531-2532-2533-2534-2535-2536-2537-2538-2539-2540-2541-2542-2543-2544-2545-2546-2547-2548-2549-2550-2551-2552-2553-2554-2555-2556-2557-2558-2559-2560-2561-2562-2563-2564-2565-2566-2567-2568-2569-2570-2571-2572-2573-2574-2575-2576-2577-2578-2579-2580-2581-2582-2583-2584-2585-2586-2587-2588-2589-2590-2591-2592-

Malicious Prosecution

Exp. 820.

1 Wm. 232

Regulated is in most cases presumptive, but never more than presumptive evidence of the want of probable cause, not always, vide supra. But being presumptive evidence it throws the onus on the Def^t to prove probable cause in most cases.

Le 4 P. 247.

Le 15 p. 15

Regulated, even on a defect in the original process is presumptive evidence of want of probable cause i.e. in most cases (but supra) - In a better "ignoramus" found is prima facie evidence of want of probable cause.

Exp. 820, Bul. 14

Le 15.

Le 29-30

Bul. 14 -

Regulated not always prima facie evidence of want of probable cause &c. If the Reg^d was recommended by a set of enquiry, on the bill of indictment has been found by a grand jury, & accordingly lies on the Reg^d the regulated on the trial - presumption being in favour of the complainant i.e. Def^t. If it appears from the Report of the Judge that there was probable cause.

Bul. 14, Exp. 820

But where the facts lie in the knowledge of the Def^t himself, he must show probable cause tho' the grand jury have found the indictment &c. Prosecution for colluding Def^t.

Bul. 14, Exp. 820

Le 15.

And proof of the evidence given before the grand jury is good evidence of probable cause; & Def^t with all the original trial as to the existence of the crime charged is admission of no other person was present at the time or before of Prosecution i.e. &c. &c. &c. Def^t.

Malicious Prosecution.

Col. 526.

But 12.
244 7.

Exception 1st When there is good cause of act in favour of one
1 another having no malicious motive & arrests the Debtor the
action lies.

But 4.

Col. 526.

But 12. 2 Min. 392.

2nd When the Off^r in the original suit having good cause
of act in a C^t not having cognizance, the act lies.

But it is necessary that the Def^t (the original Off^r) should
have known that the C^t had not cognizance.

2 Min. 305. 1007 988.

200 R. 3 But 344

3rd He being having no right of act & no color of right
& knowing it to be so, sue another for the purpose of vex-
-ation he is now liable. no such cases in the 1st books.

1 Linn. 228 245-5.

1 Linn. 24.

4th So if for such purpose he sue him for a much
greater sum than is due. But it is said that the

Col. 526.

But 12.

action will not lie in the last case for arresting
unless the Off^r has been added to excessive bail.

Col. 527

When the suit is utterly groundless & known to
be so by the original Off^r who but in a proper C^t & no
arrest of person but needs properly taken act lies. He
just must have malicious motive. Def^t had sued out a second
for a 2nd Off^r good under it after having taken other
goods under former pro. act lies for vexation &

Col. 205.

But 12.

But 206. 200 207. c. damage

2 Min. 305 392. 1007 14.

1 Linn. 24. 24 250.

The malicious prosecution must be stated when
founded on a former civil suit, & that it was done maliciously
"with intent to injure & oppress" the Off^r.

Sept. 5. Bul. R. Lo. on purpose. Cold App. to bail it that is the injury
from no damage incurred.

Dr. Walker unnecessarily meeting a debtor from London
with any particular benefit to the W. but from unpleasant makes
a poor case for this debt? Decided not to be in London Sept. 6th

in the above 2nd case it is necessary that Special
and Hqs. La. 1774 arrange to visit & procure - Does it or show an interest to bring
a groundless action suit as 'B' - is Special same necessary

as of ^{the} then as a common use not a claim or right
by him not an invention not liable in costs

This requirement in all cases to support this act¹⁰ in a civil suit.

2009. 07. 25.

Feb 15.

Sept 527-31. H. 114

But 13.

1st former actⁿ must be determined as intd. now. I can't affirm there been
remission or compact - 2^d Same, i.e. actual, all way is curved or in-
citable - suppose if we gave a bond in my name, I can have no actⁿ, till
said upon it. But not necessary that the rogation be not shown

Vol. 527.

But. 13

Have been revised in favour of the present Pp. & q. now with
 happened on the original set, & the lies any ground as now

Exl. 527

ending by actⁿ now saved as on this point suff^t

Nat. Ron. gives an actⁿ as^t all who intending & willingly wrong others
by prosecuting any suit do with intent to vex & trouble & to defraud & to
fine any of the & for this, gone to be proceeded y^t as a Com^{ts} warrant.

Pl. 99. Lib. 145

Vol. 910. Exp. 537.

Two cannot join in an act of violence, and the Minister
being separate & alone. But there may be two Septs, (see) But. 8.

537.

Pl. 79. 200 y10.

Further Damages may be recovered in this act as 'must'. The
 case contrary. How can they be removed? The nature of the defect enters
 into the consideration of damages - Not recoverable by fraction of loss.

Under what circumstances an act will lie for a malice, & vexatious.
See vide notes on Co. Litt. (B. a 4) IV. & But. K. 13. -

Malicious Prosecution

Pl. Indictment must state all the material circumstances attending the malicious prosecution, & how it was disposed of; for until that be determined it cannot be known whether the prosecution be malicious or not, & this obscurity might follow, that Plff. might recover in the action & yet be afterwards convicted on the original prosecution: tho' the want of the averment is cured by verdict that he was & is now innocent. See *Le. Selw. N.P. 92. m.*

2 Bl. R. 1050. It must appear in the declaration that the Cl which tries the indictment had authority.

In Evidence Plff. must produce an examined copy of the record of the indictment & where there has been a verdict of not guilty, of the acquittal. Tho' the Judge will not permit him to have if there was probable cause for the indictment. 4 P. Holt. Le. R. 253. See also 1 Str. 855, 1122.

In an action on the case for mal. pros. a case there was not any person present at a time when the supposed felony was committed but D. for his wife. Holt C.J. admitted her evidence given at the trial of the indictment to prove the felony committed.

vide *Le. Selw. N.P. 945* - Grand Jurymen admitted to prove who was the prosecutor

— Spence

Exp. 140. 10²⁰ 5²⁰
no. 8. 9¹⁰. 145. 48. 48.
3. Burn. 1243-

Hence if the Survey gives early decision & refusal, let us not
deside on the M^o.

2. P.M. 154. 2 M.R. 1/16. A pointer to Gooder has not been in the - for L.
Box 99 - reference. I trouble - cannot identify. Obtain - for this

271. 581.

2. 2. 20.

If one Pairing goods of another puts them into the hands of a third person at the same rate of the owner the is a conversion.

Feb. 1850 - 11 Feb. 328. H. 819.

221. Bull. 47.

1000

mod. 242. use of his mask, & even by the master's order.

When you recover the value at the time of
the taking in amount the value at the time of
the sale by the party taking. T.R. 144-5. 11

It may maintain Power.

¹⁷ If you are not object to its not being in B, but in order to answer a particular purpose for A, which cannot be removed, I may remove for the other after

512.215.445.

A cargo for B. & Co. for delivery, sells to C.
B. may have trover aft. C. 6 East 538.
✓ Lost B's boat in the humane endeavor to
arrest B. not liable in trover 4 Esp. 4 P. C. 165.

Wenn auch —

Suppose I find yards of B, & claim them,
and, on refusal, to deliver them I recover the value

90° 45' 25.

9 Dec. 11. / H. H. 600

182. ¹⁰⁰⁰ = 9. Full. 54 analogy to the case of administration repeated. &c

3 Dec. 1812 Roll 187. This not necessary for Bt to have had the resolution

19 Feb. 1838. Hatch 214. - 1 up of the thing - 4. p. 1. Factor may maintain the act of
delivery of goods to carrier at request of
owner & deliver to carrier & then to 1832, a third person for having the goods
But the right of property is not lost
if complete. 6 B. 184 Case of Brown
his black servant who had stolen the

(Bos. m. 464) Peak 80 Feet x 140.

Official carrier - agitate H. not ag - Carrier for more non delivery Lb. 80. 341

Rev. Mr. Bul. 33.9. Lams. 47. G. a. 1890. 1891. 1892. 1893. 1894. 1895. 1896. 1897. 1898. 1899. 1900. 1901. 1902. 1903. 1904. 1905. 1906. 1907. 1908. 1909. 1910. 1911. 1912. 1913. 1914. 1915. 1916. 1917. 1918. 1919. 1920. 1921. 1922. 1923. 1924. 1925. 1926. 1927. 1928. 1929. 1930. 1931. 1932. 1933. 1934. 1935. 1936. 1937. 1938. 1939. 1940. 1941. 1942. 1943. 1944. 1945. 1946. 1947. 1948. 1949. 1950. 1951. 1952. 1953. 1954. 1955. 1956. 1957. 1958. 1959. 1960. 1961. 1962. 1963. 1964. 1965. 1966. 1967. 1968. 1969. 1970. 1971. 1972. 1973. 1974. 1975. 1976. 1977. 1978. 1979. 1980. 1981. 1982. 1983. 1984. 1985. 1986. 1987. 1988. 1989. 1990. 1991. 1992. 1993. 1994. 1995. 1996. 1997. 1998. 1999. 2000. 2001. 2002. 2003. 2004. 2005. 2006. 2007. 2008. 2009. 2010. 2011. 2012. 2013. 2014. 2015. 2016. 2017. 2018. 2019. 2020. 2021. 2022. 2023. 2024. 2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136. 2137. 2138. 2139. 2140. 2141. 2142. 2143. 2144. 2145. 2146. 2147. 2148. 2149. 2150. 2151. 2152. 2153. 2154. 2155. 2156. 2157. 2158. 2159. 2160. 2161. 2162. 2163. 2164. 2165. 2166. 2167. 2168. 2169. 2170. 2171. 2172. 2173. 2174. 2175. 2176. 2177. 2178. 2179. 2180. 2181. 2182. 2183. 2184. 2185. 2186. 2187. 2188. 2189. 2190. 2191. 2192. 2193. 2194. 2195. 2196. 2197. 2198. 2199. 2200. 2201. 2202. 2203. 2204. 2205. 2206. 2207. 2208. 2209. 2210. 2211. 2212. 2213. 2214. 2215. 2216. 2217. 2218. 2219. 2220. 2221. 2222. 2223. 2224. 2225. 2226. 2227. 2228. 2229. 2230. 2231. 2232. 2233. 2234. 2235. 2236. 2237. 2238. 2239. 2240. 2241. 2242. 2243. 2244. 2245. 2246. 2247. 2248. 2249. 2250. 2251. 2252. 2253. 2254. 2255. 2256. 2257. 2258. 2259. 2260. 2261. 2262. 2263. 2264. 2265. 2266. 2267. 2268. 2269. 2270. 2271. 2272. 2273. 2274. 2275. 2276. 2277. 2278. 2279. 2280. 2281. 2282. 2283. 2284. 2285. 2286. 2287. 2288. 2289. 2290. 2291. 2292. 2293. 2294. 2295. 2296. 2297. 2298. 2299. 2300. 2301. 2302. 2303. 2304. 2305. 2306. 2307. 2308. 2309. 2310. 2311. 2312. 2313. 2314. 2315. 2316. 2317. 2318. 2319. 2320. 2321. 2322. 2323. 2324. 2325. 2326. 2327. 2328. 2329. 2330. 2331. 2332. 2333. 2334. 2335. 2336. 2337. 2338. 2339. 2340. 2341. 2342. 2343. 2344. 2345. 2346. 2347. 2348. 2349. 2350. 2351. 2352. 2353. 2354. 2355. 2356. 2357. 2358. 2359. 2360. 2361. 2362. 2363. 2364. 2365. 2366. 2367. 2368. 2369. 2370. 2371. 2372. 2373. 2374. 2375. 2376. 2377. 2378. 2379. 2380. 2381. 2382. 2383. 2384. 2385. 2386. 2387. 2388. 2389. 2390. 2391. 2392. 2393. 2394. 2395. 2396. 2397. 2398. 2399. 2400. 2401. 2402. 2403. 2404. 2405. 2406. 2407. 2408. 2409. 2410. 2411. 2412. 2413. 2414. 2415. 2416. 2417. 2418. 2419. 2420. 2421. 2422. 2423. 2424. 2425. 2426. 2427. 2428. 2429. 2430. 2431. 2432. 2433. 2434. 2435. 2436. 2437. 2438. 2439. 2440. 2441. 2442. 2443. 2444. 2445. 2446. 2447. 2448. 2449. 2450. 2451. 2452. 2453. 2454. 2455. 2456. 2457. 2458. 2459. 2460. 2461. 2462. 2463. 2464. 2465. 2466. 2467. 2468. 2469. 2470. 2471. 2472. 2473. 2474. 2475. 2476. 2477. 2478. 2479. 2480. 2481. 2482. 2483. 2484. 2485. 2486. 2487. 2488. 2489. 2490. 2491. 2492. 2493. 2494. 2495. 2496. 2497. 2498. 2499. 2500. 2501. 2502. 2503. 2504. 2505. 2506. 2507. 2508. 2509. 2510. 2511. 2512. 2513. 2514. 2515. 2516. 2517. 2518. 2519. 2520. 2521. 2522. 2523. 2524. 2525. 2526. 2527. 2528. 2529. 2530. 2531. 2532. 2533. 2534. 2535. 2536. 2537. 2538. 2539. 2540. 2541. 2542. 2543. 2544. 2545. 2546. 2547. 2548. 2549. 2550. 2551. 2552. 2553. 2554. 2555. 2556. 2557. 2558. 2559. 2560. 2561. 2562. 2563. 2564. 2565. 2566. 2567. 25

Trove

The 2d condition the commission can place in the certificate.

2d Line.

Justice right is said to be founded on his own liability

Mar. 24th. 1860.

2d B. 32. 1 Mac.

1845. 232. in 2d. 80.

1845. 232.

with Bailor i.e. someone, if at all, on the possibility
of being liable, & this always exists special property

is settled in the case of depositary, 5 Mac. 165. L. 22

with special property which he has subject to use

of person superior - person only subject. Borden he

may be liable - no Bailor liable in all events.

policy - not.

of agreement to take of a carrier by water
that he had not goods carrying for freight but that
he had not delivered them according to his duty.
This is found on contract & is not in any place in
statement that his negligence are not joined
2 Mac. 232. 1865. This overrules the
decision in 2 Mac. 69, absolute.

If one delivers to a goods of T. S. the Bailor

by delivering them back to Bailor exonerate himself

from T. S. claim. That delivery is effectual to bar an
act by T. S. even if the delivery back is pending the act.

Place the Dept. knowing the receipt to be T. S. has
agrees to deliver to him. That this evidence is an
unlawful delivery.

1840. 232. 1845. 232.

1845. 232.

Known by Bailor such Bailor & his act for
the full value of the goods.

To Bailor by giving the wrong over first over to the Bailor
of his act (Bailor) commencing the act attaches a right
recovery - To if Bailor sees first, Bailor is entitled to his
act of T. S. for the full value but on many cases
can act for his special damage - analogous to one
a special delivery by mistake or loss in who begins first. He
and another act 2 Mac. 69.

1845. 232.

1845. 232.

But in such cases, your dischargee bailee is liable
to recovery if bailee goes first, he makes himself liable
to tortion -

His action is to recover the value of the property
lost, with some loss on lower way? - who loses the
property? - It would think that the bailee may have

to recover the value of the property lost, with some loss on lower way? - who loses the
property? - It would think that the bailee may have

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property? - It would think that the bailee may have

to recover the value of the property lost, with some loss on lower way? - who loses the
property? - It would think that the bailee may have

Action of Replevin

373

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Ind. St. 145
3.2.8.4

1. Pac. 372. In Case of replevin is a recovery to the owner by legal
Enk. 347.
Geo. Litt. 145. ^b upon a ^b calling goods distress, for any cause or security
given to try a right & to recover if person 'be g^d' time.

2. Pl. 8.

Detention is the taking of a person's chattel out of the
possession of the wrongdoer into the custody of the party injured
to procure satisfaction for the wrong committed. It is the
act of the party injured. Detention signifies the thing taken by
distress -

3. Pl. 5. 8 Pl.
140 Ind. St.
Enk. 54.

Replevin lies not for goods so taken by a mere trespassing act. Nor for anything but goods & chattels. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000

3. Pl. 13. 147
Geo. Litt. 145.
Enk. 347-8.

Right not granted but when security given by
to try the right of detention is in Ang. & to recover the
property if person is for detention.

Geo. Litt. 145.
4. Pac. 372-82.

In Case of replevin does not try the right (i.e.
does not pursue his act) or fails in it the property is to be
returned to the detainer, who may have a writ de return habendo.
If being returned to the detainer he may keep it till return of
writ & amend - no longer.

3. Pl. 147-8.
Geo. Litt. 145.
Enk. 347-8.

Order of replevin comes before distress, makes the detainer return;
if before impounding it makes the impounding or detainer return
not the taking, & if the person is in detainer it makes the detainer
return, unless, as before - but in the last case self
may have detainer, or, I suppose, trover.

Replevin

3 Pl. 12.
De Litt. 47.

When a distress is taken, it is to be in possession; in animals
chattel in a pound covert; animals greatly in a pound covert
(in pound covert here)

1 Pl. 182

In law, the security is a substitute for the property. It obliges the bondsmen to restore in 40 days, merely. & the property is not redelivered to the distressee in any event.

3 Pl. 10 & 13.
1 Brev. 586.

Specially in Reg. a distress being in nature of pledge it could not be sold; the distressee could only keep it as a punishment to the owner of the chattel. Statute, however, in a great measure remedies this inconvenience, especially in case of distress for rent, by allowing a sale in certain cases, but not in case of cattle taken. Damage, however, & some other cases. There were always some exceptions to the old rule.

3 Pl. 4. 860. 41
12 mod. 930

4 Pl. 373.
De Litt. 145.

Right of replevin is deniable as a matter of right & even the rent is granted with right of distress irrepleviable.

The principal cases in which distress may be taken
3 Pl. 17. De Litt. 46 by the Reg. law are two - 1st the case of cattle damage - 2nd For non-payment of rent. (This not ^{but when Reg.} in use here) - In Reg. there are certain other cases of replevin, viz. neglecting suit or service, for an account, tolls, forage, &c.

3 Pl. 17. De Litt. 46.
Reg. 304. 355.

In Reg. Replevin (with off) lies in all cases I think in which distress is taken except when the distress is provided for a capias in arrears -

Replevin.

4 Bac. 373.

3 Hl. 147.

5 C. B. 58-9.

13 Co. 31.

At Com. Law the proceedings in replevin were shown
the writ must issue out of C.B. the goods to were there, being
detained from the owner - By Stat. 1 Maccl. 52 Sec. 3.
the Plaintiff is entitled to replevy immediately. Stat. 1 Maccl. 52 Sec. 3.

2 Bac. 244.

Analogy between taking the body of a Debtor & in-
fringing cattle, with pledges. Demand not satisfied by
death, nor by overhauling the party imprisoning is in-
fringe. In both, pledge being broken, no other remedy.

5 Bac. 179.

10 Mod. 669.

In Com. when cattle taken damage peasant are
imprisoned, the owner not only may have replevin, but
after notice he must replevy or redeem them within 40
days or run a forfeiture of 100 lb. & head & expenses of keeping
these forfeitures to are applied for payment of damage & expenses
incurred under between owner & pound keeper. He is exonerated
by an assize or Just who issues exoner therefor.

3 Hl. 13. Cas. 2447.

In Com. also the owner of cattle distrained must
provide for them, unless they are put into a pound convent,
then distrainer must do it.

2 L. 21.

If the owner replevies in this case & judgment is given
for debt in replevin, he will recover in the action for the
damage done by the cattle, & have excon. If the excon is
not discharged by Just in replevin, the poundman is liable
after the the owner of the cattle is taken in excon & he is
in person or is discharged.

Replevin

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Every man & his man for cattle taken from a peasant
contains in form an action of trespass. Generally however the
replevin does not depend on recovery of damages, but only on the
return of the cattle & the damages awarded. If however
the cattle were unjustly taken & the replevin was not
sufficient.

The owner keeps a horse on the cattle
impounded for this time as of a cattle not returned
to the owner. Judge R doubts as to the right of replevin.

In case of the owner of cattle taken damage present is
unknown, & available is to be improved, who is to hold them
in the town & the next town, & if the owner does not appear
in a certain time so many may be sold as to pay the damages
& expenses, for the owner has the promise of support.
2d. Sec. 348. When such things are also to be sold under certain restriction
the rest of the damage peasant

Generally when cattle enter this the insufficiency of
fence of the owner of the land, no damages are recoverable
etc. But if they have the good part of the fence, it
being partly good & partly bad, damages are recoverable
& they may be improved - to if the cattle are unruly.

2d. Sec. 348. If they enter from the highway, immaterial as
to whether the fence is good or bad - because it is
unlawful to permit them to go abroad in the highway -

Stat. 180. 346. But in some cases cattle & stock are by usage commonable
to the highway from the highway, if the fence is insufficient
no damages are recoverable - cattle of houses & barns.

- Replevin -

Cattle once replevin into the hands of another, so secure that the owner is out of repair, if they were to be taken or placed they came for the debt. - 2 Hyl. 527. & 31, in 3 Hyl. 126.

It is not to be supposed a person is common, into which difference full was killed, but that if the owner had knowledge that his name was there, carefully for here it was damnum sine injuria Gra. Dec. 158.

But is for a statute town to make any cattle commonable, & then there is no difference between entering

from the high way & from an adjoining field. 2u.

For mischief done by animals, from a disposition

common to the species owner is liable with notice or knowledge, as a Bear biting or cattle trespassing.

For that committed from a disposition not com-

ly. 25. 2. Corp. 601. the owner is not liable without science e.g. a dog biting - the science not favourable i.e.

Li. 11008.

1 Hyl. 4. 4 Co. 18.

re. 10. 380. In action in the case "

by force but must appear true or false in evidence -

If the owner of land chase a beast damage resultant on to the land of the owner of the beast he is not liable for chasing. If a stranger chase the thing is liable to both.

Lat. 120.

5 Bac. 179.

2 Hyl. 13. Gra. Dec. 148.

Testimony not allowed to use a beast detained. It becomes a Verba ab initio.

4 Bac. 388.

When there is a trial in replevin, the Defor may either deny the taking or show his right to take. I speak only of Replevin in case of beasts damage (Peasants)

Lat. 24. 3 Hyl. 150.

2 Land. 175.

Defor justifies, because the beast was damage resultant to him, calls the plaintiff where he justifies in his own right in that of his wife.

24th 1871. If the justice in another right (as serv'ce) is paid to make cognizance

Recovery is in nature also of a plea to the replevin. The replication is in nature to plea to the recovery. In this case both parties are vectors i.e. Pliff the owner of the cattle suing for damages & the account in serv. for a return of the cattle & in some cases damages.

But' 61. In Case Cost claim damages the cattle being has not returned

Pliff 95 That recovery is in nature of an act & appears from 4th Bac. 373 the amount right to recover 'judgem' for return of the 2nd 1871. distress & in some cases damages. & Pliff may plead in 1st Bac. 273 abatement of the recovery & 3rd amount need not close with no. 6552, 798. cont. 122. 6th 1873 - 2 replication Pliff 953. 1st 1873. 4th Bac. 373.

no. 590. 4th Bac. 373. But the recovery is in nature of an act & some 2nd 1871 for 'in com' means it is in serv with his fellow for 1st Law. 262 taking cattle damage servant overruled. He must make 2nd 1871. 380. Roll. 220 p. 1. Cognizance is indiff of the other.

2nd 1871. 784 case 4th in com may have several recoveries for rent, Cont. 340. Law. 380. Law. 220. because it is in the reality

As little brand may come in question in this action it has then been all a real act - new rule -

Replevin

1 Dec. 373. Ind. 2. 26.
 Com. 6. 373. 472-27.
 4 T.R. 504.

The personal as Replevin or Debt: For Land cannot be recovered in it.

The Com. of writ of replevin in case of cattle damage Peasant is returned to a Justice & the damages exceed his jurisdiction he must dismiss the writ. I suppose I say that if Justice taken Peasant pin-hounded, escape, & damage & procurage are recoverable by writ of Debt in procurer making oath that he took them damage Peasant.

Est. 346

374. 11. 300. It is a rule that all distress must be taken by dey Est. 142. 18. except in case of waste damage Peasant, and they should escape.

374. 11. 300. Distress for damage Peasant must be made while the cattle are on the Land. For only so with respect to distress for reest, except that it might be taken on Grass suit - now remedied by Stat.

374. 11.

As to distress for rent formerly the Landlord

374. 12. 300. 46.
 1 Hen. 10. 12. 85.

might take as large a distress as the Landlord - but had no remedy - ^{now} ~~one~~ now has by Stat. of Merton & then 3rd & Special writ on the case - Thorp. not maintained by Brown 374. 12. 300. 46. in this case it being no injury at com. Land except where 374. 12. 300. 46. certain known values were distressed - in other cases a Special writ on the case founded on the Stat. in the replevin remedy.

Brown 100

Replevin

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(Distress for rent is incident of contract - according to common law) to those cases only in which the Debtor or owner of the goods has the reversion, not where the Debtor has no future interest, as in case of rent charge, as where the owner of the land conveys his whole interest, recovering a rent. But he may have the right by clause of distress in Com. Law.

2 W. 13. 9006. For the right of distressing is by Stat. 4 Geo. 2^d, tenor Esp. 355-6. - all rents.

In case of distress for rent by Stat. 17 Geo. 2^d if the Defor in the action of replevin prevails, he recovers his costs & so much in damages as is equal to the value of the distress if that is less than the rent due, but if the distress is equal to or more than the rent due, he recovers in damages the amount of the rent. In the first case Distress may have a Justification.

3 W. 116.
1 W. 150.
1 Bul. 58.
3 W. 541.
2 W. 156. 36.
Esp. 377.

In case of personal property attached. Replevin in this

2 W. 93. 10004. case is never an adversary suit, no return on the replevin writ, but on the attachment. This is called a mandatory precept

Kirk. 276. requiring the Sheriff to deliver the goods.

By this writ plaintiff is restored to the owner or his finding security to prosecute & to answer "such damages demands" as the adverse party shall recover. The security to prosecute the replevin is in this case a mere matter of form.

Replevin

The writ is founded in good policy, that the owner
should not be dispossessed of his property for a long time
& is attaching is but for security he suffers no
injury - security is sufficient.

2 Nov. 93

The object being to regain the property the
writ is to change no wrong, nor demand damages
in presence that the taking is illegal. Decided by
Supt. C. in Rem. that a replevin of goods attached should
be directed to the officer who attached them requiring
him to redeliver (not subject to give notice to the
officer attachment & to return the writ).

Kirk 2nd W.

Replevin returned to the holder of the
original writ is not. The bond is the pledge to
secure the original writ & is preserved in C. on file for his
benefit. Bond taken for all losses to prosecute now up to
the adverse party. Supt. in Replevin.

2 Nov. 93
Hut. Cum. 28.

Replevin is in some measure superseded by rescripting
magistrate taking the Bonds, acts ministerial. He is
liable if Bonds are insufficient (but not if the bondsmen is responsible
at the time) & the writ may be lost as in the previous
case. See Cum. 28 as the Rector.

Boul. 60.

8 Nov. 28. M.C. 70.
Coush. 71.
24 Nov. 28. 18. 18. 18.

He becomes security in this case for the whole Debt.
I conceive (unless as in Rem. the Supt. does even over the

Replevin

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2 R. M. 367c amount of the Bond taken in the case single. Case in
 Corp. 348. Bond. R. M. stronger than in similar case Bond in Corp.
 380. 4 R. M. 439.
 Contra 2 R. M. 547. Query for a return. The goods. The act. Case Bal. 60

Bal. 60. I formerly doubted whether the act would tie Bond
 2 R. M. 36. in Corp. could the value of the goods

It has been a question in Corp. whether a J. p. bond
 might be taken by the magistrate; Decided in lat. of Benson
 that it cannot. Is it that the magistrate is liable on P. p.'s
 failure, the responsible when the bond was taken. Suppose
 (Book 145) J. p. does not fail - is the justice liable in the first instance?

It has also been questioned whether when property to
 a small amt is attached & replevied, the bondman is
 liable for more than the value of the property. No decision
 4 S. 11. 433. Judge Reeves opinion aside from the Stat. But the
 2 R. M. 547. words of the Stat are explicit. It is always to cover a receiptman
 2 R. M. 348. who is always liable for the whole unless he delivers the property.
 2 R. M. 304. contra. decided contra.

Questioned also whether bondman can discharge himself
 by surrendering the goods after judgment for Defor or replevin?
 This depends in some measure upon as he is affected by the extent of
 his liability. When the goods are taken - how far he is liable not like the
 case of a receiptman - he is bound only to deliver not like a bondman
 in Corp. replevin who engages only for the return of the goods (Suppose
 Bond that in Ben L cannot?)

If the property of one is attached for the Debt of another
 replevin does not lie, but Lock. does for the replevin in this case
 is not an adversary suit & no one can replevy unless he is a party

Replevin

Rich. 2^d. 2^d Ed. 4th. to the suit & La. a prof. 4 in the govern.

But 53. Co. Litt. 145. It seems replevin is not the proper remedy for a merely trespassing act according to the Eng. Law it being grounded upon a distress.

Exp. 975. 1 Ed. 8th. 2. If cattle of a feme sole are distrained & she marries her husband alone may replevy; for the husband becomes her lord & the intermarriage. But if the wife joins it is good after verdict,

for the presumption will be that this are Joint Tenants. — Exp. may replevy a distress taken from his Testator.

Co. Litt. 145^b. If the goods of several are distrained they cannot join in Replevin the injuries being several.

But. 972. 2^d Ed. 4th. Goods distrained in a Foreign Country, the writ here cannot be replevied here the caption might be taken for them.

But. 970. 2^d Ed. 4th. 2^d Ed. 4th. 2^d Ed. 4th. Replevin lies of things personal only not of Real Estate.

2. 1351-2. 1st Bac. 979. Replevin is founded on the right (i.e. I suppose) on the property.

2^d Lev. 98. Ent. 44. 243. in the Diff. therefore it is a good plea in abatement in law, that

Diff. 74 — the writ is in a stranger Diff. from the act of Treach. where Off. present in support for in Replevin Off. is in power till dispossessed by the replevin itself.

Fin

28th

Use many of the New York Stat. of Replevin

Real goods or chattels wrongfully detained to be replevied by writ
or Warrant. Term of the Writ

Writs or plaints in replevin may be removed by either party into
the Supreme Court

All writs of Replevin returnable on the T^h or Cth of
Term of the writ

Plff may take the lower of his ^{own} to break any house to make replevin
Plff to take security to prosecute the suit, or be accountable for the
value of the things delivered.

If return of goods be awarded Plff may have a writ of
second deliverance - but if return be again awarded the distress
is to be insupportable

On claim of prop^y if Plff wishes replevin before it is tried, he
forfeits £100 besides being accountable for the Repl^y.

Best advantage not to be driven out of the C^{ts}, nor imprisoned in dist^{ts} places, under
penalty of £10 & treble damages.

In replevin of distress for rent, Plff to take bond of Plff with sureties, to double
the value of the goods, to prosecute & make return if awarded. Such bond to be assigned to the
Def^t who may bring an actⁿ thereon in Plff's name.

An assize may be made by the lord upon the land holden of him with naming
his tenants - And in like manner on writ of second deliverance

Plffs & Def^t in replevin or in writ of second deliverance to have like pleas
and prayers as at com. Law. & like joinders in aid

If Plff in replevin is nonsuit before issue joined, Def^t may make assize
if distress was for rent & have a writ of inquiry & judgment thereon

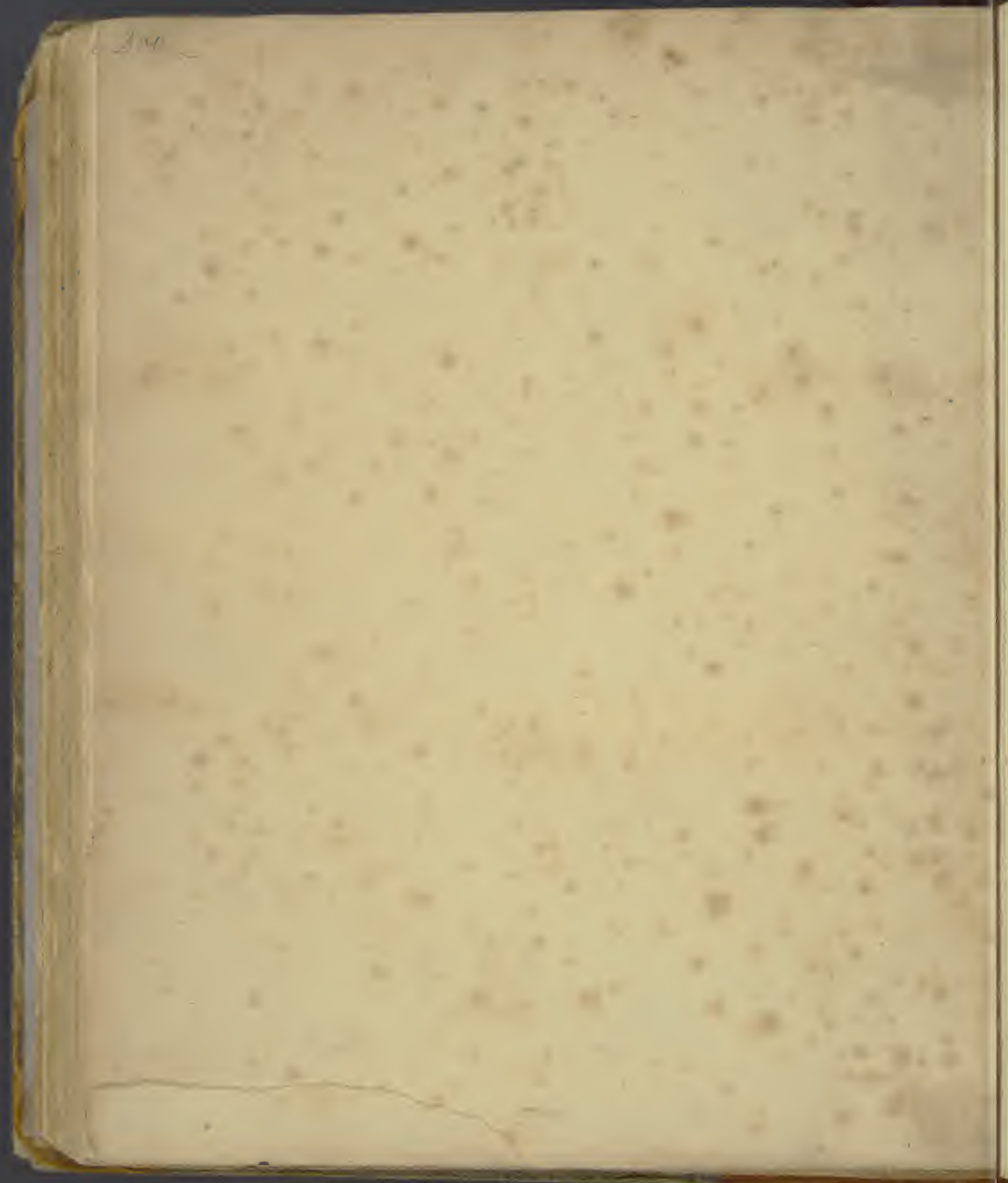
And if Plff be nonsuit after issue joined a writ is to be given of him
the jury are to enquire of the arrears & value of the distress

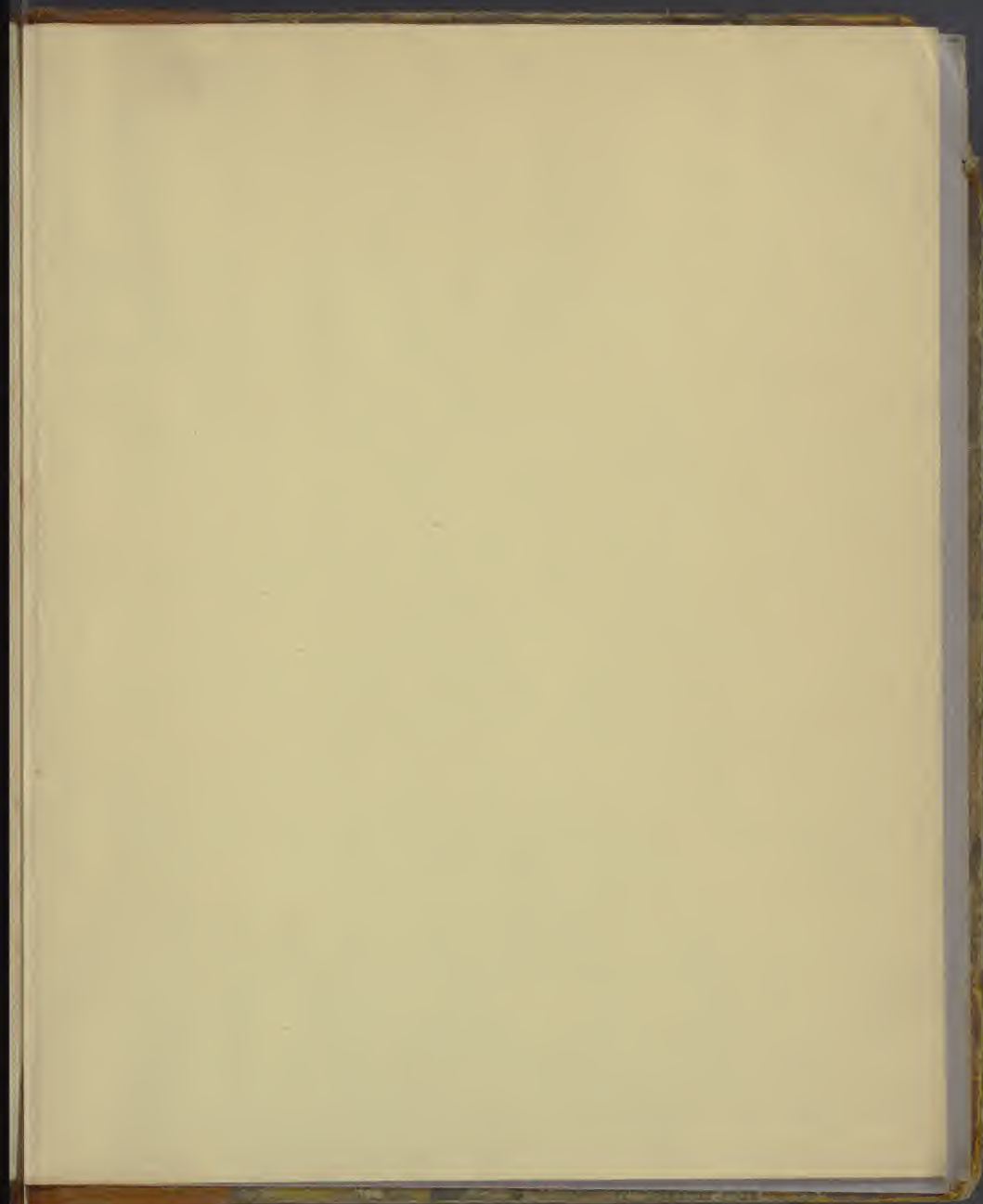
If upon Demurrer judgment be given for Def^t writ of inquiry to be awarded

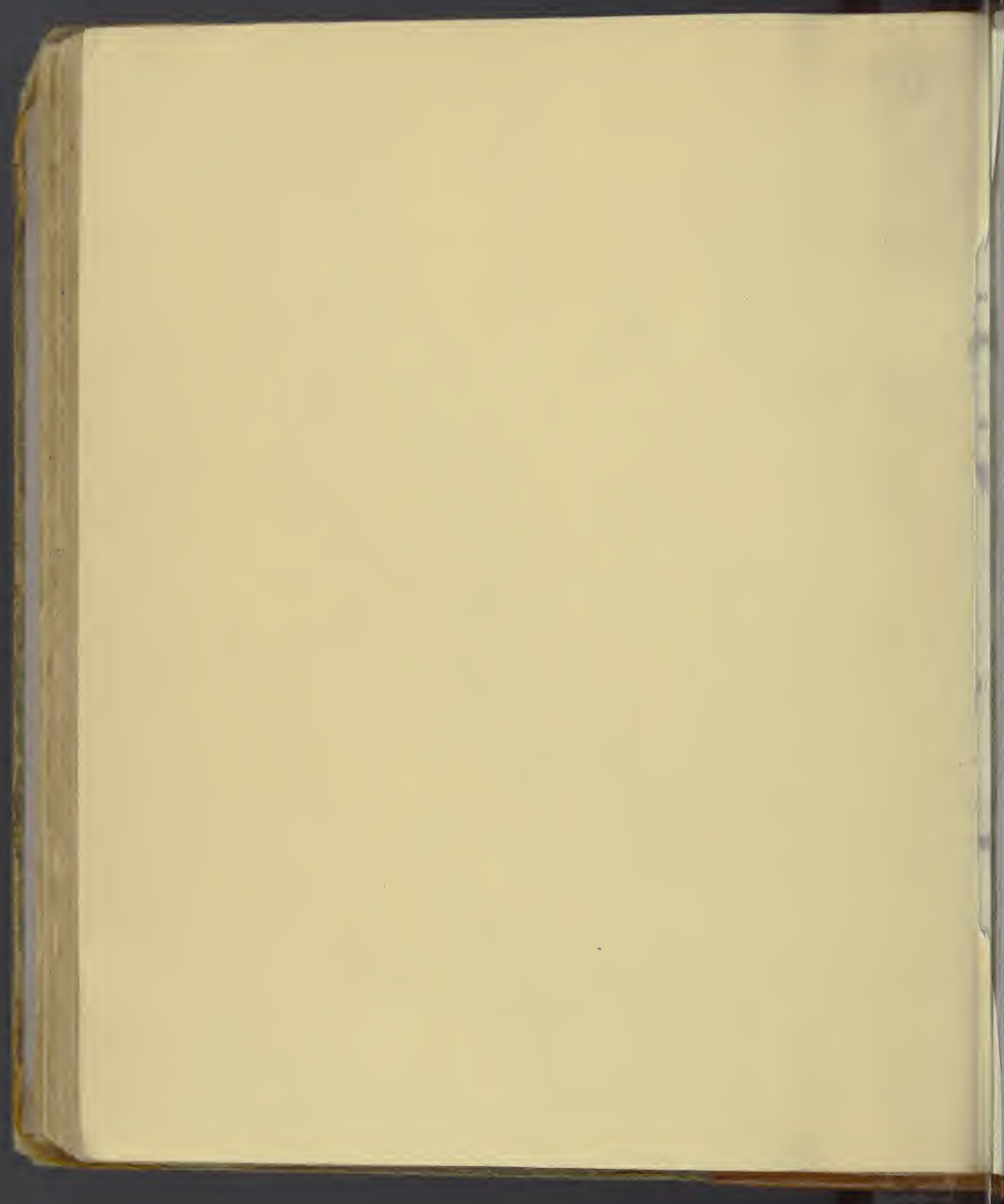
If distress is not equal to the arrears, party entitled may do train for residue

To Replevin allowed in cases of distress for tax, assessment or fine -

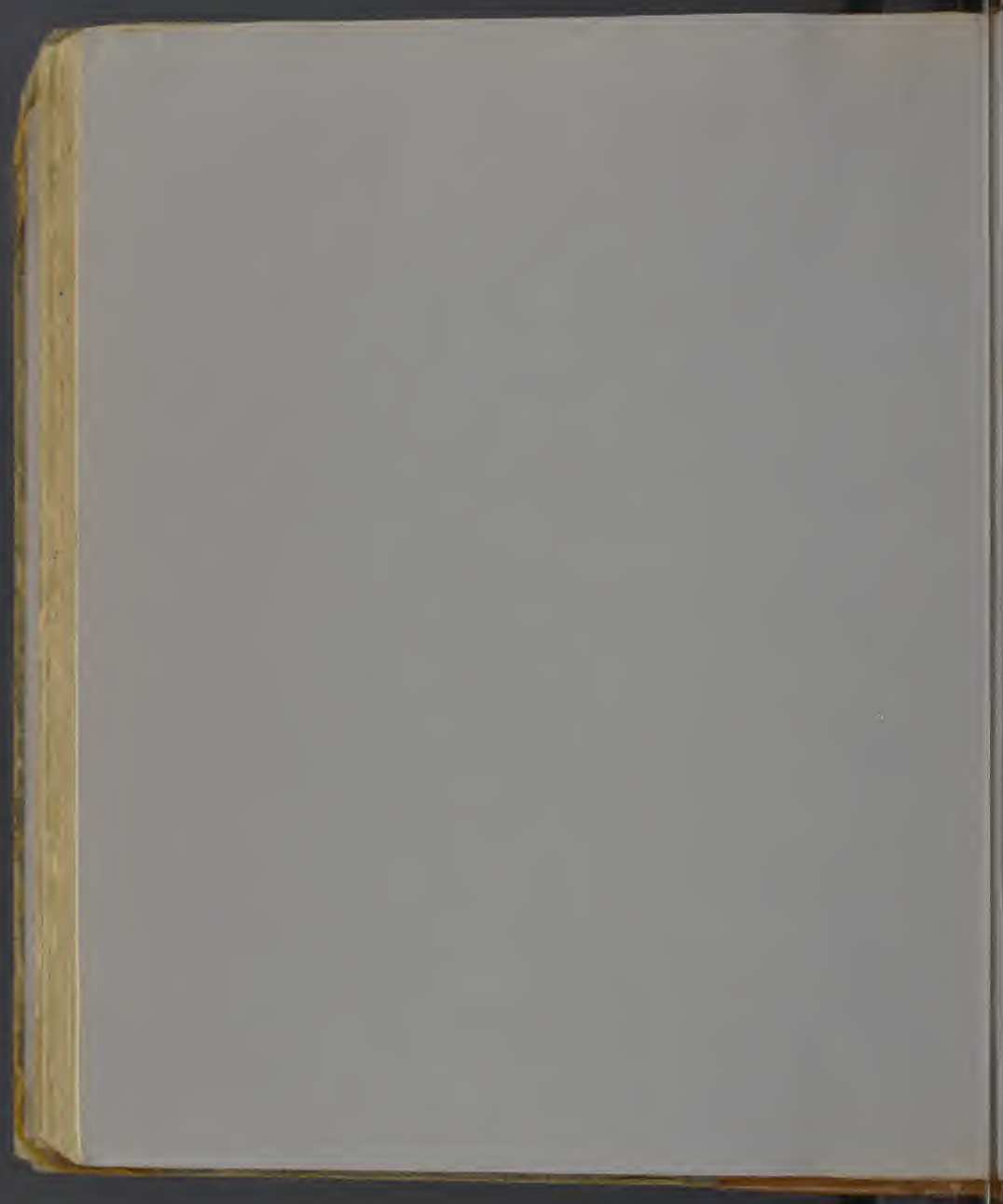


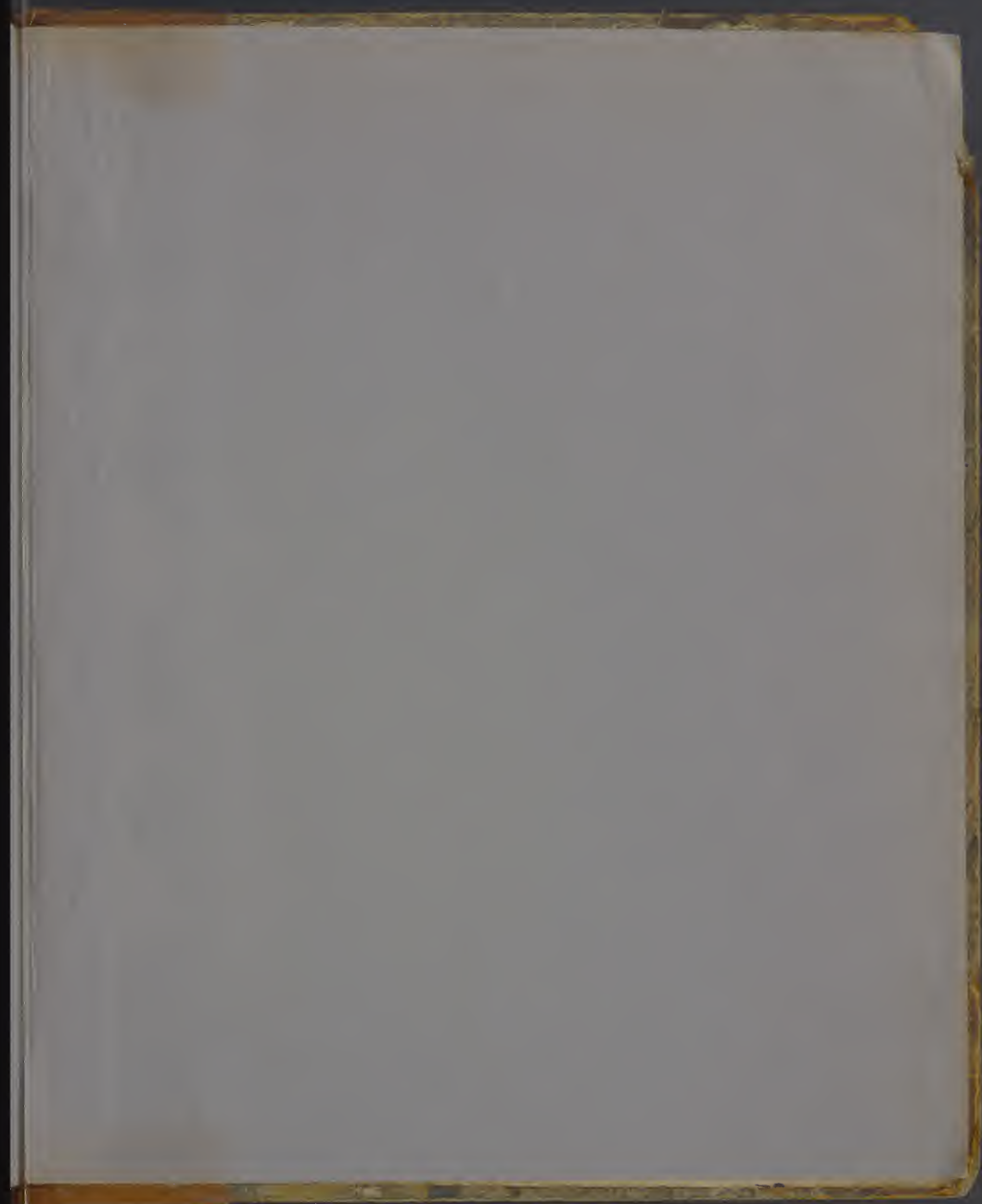














REEVE &
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